COMMERCIAL LAW, IMPLEMENTING AND SUPPORTING INSTITUTIONS ASSESSMENT REPORT

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EXECUTIVE SUMMARY

This Commercial Law and Institutional Reform (CLIR) Assessment Report was prepared by the Iraq Economic Recovery, Reform and Sustained Growth ("Economic Governance II") Project funded by the United States Agency for International Development (USAID) and implemented by BearingPoint. The report covers the central issues of commercial law: contract and sales; companies; commercial agency; bankruptcy and insolvency; collateral lending and secured transactions; competition and consumer protection; foreign direct investment; international trade; intellectual property; and labor and employment. For quick reference, a table of the most important recommendations in each of these areas is provided at the end of this executive summary.

i. Overview

The future prosperity of Iraq will require a fundamental shift from a socialist to a free market orientation and the concomitant creation of a supporting legal and institutional framework. The current legal structure is an agglomeration of laws drawn from a consecutive series of Ottoman, royal and Ba'athist legislation, CPA orders, and a few new enactments by the interim Council of Ministers and the Transitional National Assembly. The basic structure of Iraqi law reflects the dissonance in its historical sources and associated legal philosophies. This dissonance is expressed by a lack of clarity in the organization of the corpus of Iraqi laws and in ambiguity within the statutory language of the laws themselves. In addition, the previous regime spent decades building a legal, regulatory and institutional culture characterized by command and control as opposed to facilitation of the private sector.

This legacy represents a significant challenge for the reconstruction and development of the Iraqi economy. Laws and regulations must be modernized, rationalized and harmonized, both with each other and with key international conventions, if Iraq is to emerge as an economy that empowers the private sector to generate employment and growth and actively participates in the world economy through trade and investment. Addressing this challenge will require extensive legal analysis, careful policy planning and statutory drafting, along with ongoing capacity building within the judiciary and other government institutions charged with implementing Iraq's body of laws. Changing old attitudes and habits and developing a new, transparent system of due process in government administration at all levels will probably be the most challenging task.

The process of legal reform has already begun. The Coalition Provisional Authority (CPA) enacted many commercial laws, including new laws on company registration, foreign investment, intellectual property, banking and bankruptcy. However, these laws have met with varying success in post-war Iraq due to a lack of institutional implementation capacity within government agencies, as well as bureaucratic resistance and doubts as to their legal force. Future commercial law reform efforts should therefore include ratification by the sovereign Iraqi government of important CPA commercial law enactments and sustained efforts to ensure their implementation.

With sovereignty, a newly elected government and a National Assembly, Iraqi law continues to evolve. A draft of the new Iraqi Constitution has been written by a committee of the National Assembly elected in January 2005 and will be submitted to a vote by national referendum on October 15, 2005. This draft guarantees due process and the right to property and supports the role

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of private investment and commercial activity in economic development. Generally, it appears that the new constitution will continue the trend to a more market-friendly legal structure in Iraq.

Iraq's future commercial legal framework should integrate best international practices with the principles contained in the Iraq Civil Code of 1951, which covers the basic contract, agency, tort, and property laws of Iraq. Eliminating the remaining Ba'athist laws that obstruct commerce and facilitate corruption, is an essential first step in the process of creating a modern free market economy. Several Iraqi institutions will play a central role in the legal reform process – the courts, government ministries, business registries, and regulatory and enforcement agencies all have important roles to play. Many of these agencies are now being restructured in an effort to improve their readiness for reform and responsiveness to citizens. A legal and institutional framework characterized by transparency and predictability will be the *sine qua non* to build the confidence necessary for increased domestic and foreign private sector investment in Iraq.

There is recognition within the Iraqi government and civil society that legal reform is necessary. Earlier this year, the Ministry of Trade reportedly proposed an inter-ministerial commercial law reform committee, and Iraqi legal scholars have circulated draft laws on at least the subjects of maritime law and consumer protection. Also donor initiatives, such as the USAID Economic Governance II project, have prepared several draft laws in a number of key commercial law fields with extensive Iraqi input. Current legal arrangements as provided in the Transitional Administrative Law (TAL) and the draft of the new constitution give the National Assembly full legislative authority to enact, amend and repeal legislation. Thus, the prospects for reform are good, but await some permanence in the political system and legislative mechanisms of Iraq once a new constitution is ratified.

ii. Principal Priorities

The following is a summary of the most important recommendations we make in this report. We begin with a set of general priorities that apply to all areas of commercial law and then discuss priority reforms in each of ten key areas of Iraqi commercial law. While these ten legal areas are not necessarily all equally critical to economic reconstruction and private sector development in Iraq, each nonetheless constitutes an important part of the enabling environment for economic activity. The summary of each legal area starts with a sentence explaining what this area of law seeks to accomplish and why it is important, or very important, to economic development in Iraq. We then describe the most urgent reforms in each area, as well as longer-term strategies for helping to ensure that reforms have sustained impact. For quick reference, a tabular summary of the recommendations is also provided at the end of this executive summary.

One further point should be made for the executive reader. While this report attempts to capture a view of Iraq's commercial law status and requirements as of fall 2005, there are multiple proposals for change from both within and outside of the Iraqi government and polity, which may soon render information found in this report out of date. We therefore strongly recommend that anyone considering taking action based on this report conduct a diligent review of Iraq's Official Gazette and consult with experienced Iraqi lawyers.

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General Priorities

Commercial law reform in Iraq will require an overall restructuring of the country's legal and institutional framework. Iraqi government institutions, courts, private sector groups and legal organizations will need assistance in this effort. Accordingly, the following steps are recommended:

- A commercial law reform commission of Iraqi lawyers, judges and economists drawn from government, university law faculties and non-governmental institutions should be established to develop and undertake a comprehensive program of reforming Iraq's commercial law and to build broader societal support and awareness of commercial law reform.

- A new body of Iraqi law should be codified by subject matter and promulgated, pursuant to the recommendations of the law reform commission with regard to content, subject matter and taxonomy. Such a codification could build on key Iraqi laws such as the Civil Code of 1951, the Law of Commerce No. 30 of 1984, and the Penal Code of 1969.

- Improving the infrastructure of the court system is critical. Key areas of improvement include the renovation of the physical facilities and the installation of computerized docketing and records management systems.

- Additional judges are needed to meet the demand for criminal investigative magistrates, trial judges and administrators. These judges should receive training in basic legal principles such as due process and the rule of law, as well as specialized areas such as forensic evidence, bankruptcy, commercial contracting, transportation law and international commercial conventions.

- The legislators and staff of the National Assembly should receive training in legislative drafting. Historically, many Iraqi laws contain vague language that can result in discretionary and inconsistent interpretation.

- The regulatory roles of federal, regional, and provincial governments with respect to commerce must be clarified in order to prevent duplicative regulation of business. The draft constitution suggests that regions will share oversight of customs and "general planning and development."

Beyond the aforementioned legal and institutional prescriptions, increased support for public education initiatives focused on the merits of the free enterprise system will be important to transform the organizational culture of government so that legislative reforms can have sustained impact over the long-term.

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Contracts and Sales

Contract law reform will be very important in ensuring that laws support, rather than hinder, private sector commercial activity. Iraqi contract law has an essentially sound legal foundation in the Civil Code of 1951. However, the major problem rests with the continuing existence of laws and regulations adopted by the Ba'athist government that require prior approval of contracts by state authorities, and impose price controls and licensing requirements for imports and exports. Stringent state control of contracting suppresses commerce and investment, drives businesses into the informal economy, and encourages corruption. The following immediate steps are suggested to improve contract law in Iraq:

- The Law of Regulation of Trade No. 20 of 1970 should be repealed as an immediate priority. This is a comprehensive price and economic control law that imposes severe penalties for vague offenses.

- The Law of Commerce No. 30 of 1984 should be amended to revise provisions regarding traders in Articles 1 – 38. Priority should be given to eliminating Ba'athist language which asserts the state's primacy over private interests, particularly Article 7, which gives ministries control over private enterprise by sector of the Iraqi economy, requirements to keep a paper ledger, and business registration requirements that are duplicative of the Law of Companies and local municipal licensing regulations.

- The onerous import and export licensing requirements of RCC Resolution 483 should be repealed. These rules require import and export licenses for all international commercial transactions, and are burdensome by design, intentionally impede trade, and create opportunities for corruption.

In addition to the repeal of Ba'athist laws, some other desirable – but less urgent – additions to the Civil Code would be beneficial over the long-term, including provisions for the leasing of moveable property; franchising; and an amendment to the Code of Civil Procedure clearly defining the use and recognition of international arbitration in international commercial transactions.

Companies

Company law reform will be important to encouraging private sector development and entry of informal small businesses into the formal sector. Best practices in company law provide several choices among common corporate structures and facilitate the formation and operation of companies. The CPA amendments to the Company Law and the USAID capacity building programs were significant first steps in the reform of Iraq's company law and its institutional framework. The 2004 reforms have demonstrated that legal and institutional reform has a positive effect, as several new companies have been registered. Nonetheless, further legal reforms are necessary, as there are outstanding issues in registration, governance and company regulation, as well as bureaucratic resistance to reforms allowing foreign ownership of Iraqi companies.

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- The Company Law of 1997 should either be amended to incorporate the 2004 CPA reforms or replaced with a new Company Law that similarly includes those reforms. The 1997 Company Law or its successor law should be fully applied throughout the country as soon as possible. Currently, the 1997 law is not applied in parts of northern Iraq.

- The Law on Commerce No. 30 of 1984 should be amended to simplify requirements for approval of a company's name; this procedure should be incorporated into the company registration process. The amendments should also specifically delete Article 7, which imposes ministerial approval of company registration and government supervision over all business activity, should be repealed.

Following the enactment of the legal changes recommended above, training and capacity building for registrar officials should continue as new registries are opened throughout Iraq in order to help them establish modern business-friendly registration systems, flexibility in corporate forms and simple, consistent registration procedures.

Agency

The adoption of a best practice legal regime in Iraq that sets clear rules for the conduct of principals and agents with regard to their dealings with third parties will be important for expanding commercial activity, investment and trade. The scope of current agency law in Iraq requires clarification and simplification. Agencies can either facilitate or hamper business. Laws on commercial agency common in the Arab world, including Iraq's Commercial Agency Law of 2000, often impose limits on foreign businesses by requiring them to have a commercial agent who is a native of the country. The basic principles of Iraqi agency law contained in the Civil Code are sound; only a few provisions require an amendment or revision.

- Law of Registration No. 4 of 1999 should be repealed or amended to either remove all licensing requirements for anyone acting as a registration agent, or to state that all lawyers may act as registration agents.

- The Commercial Agency Law No. 51 should be amended to delete the requirement that commercial agents must be Iraqi nationals.

In addition, Article 52 of the Civil Procedure Code of 1969 should be amended to allow attorneys of the highest grade a wider scope of action when representing clients in litigation and as agents, and to remove the ambiguity in the general law of agency created by Article 52, which requires special authorization for a wide range of acts, even if a general power of attorney has been created.

Bankruptcy/Insolvency

The development of modern bankruptcy law and practice will be important to economic development in Iraq by increasing confidence of creditors and thus promoting greater lending to entrepreneurs. As the Iraqi economy grows and more businesses are created, some will fail and

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enter into bankruptcy. This, along with the need to encourage creditors to extend finance to new and expanding businesses, heightens the need for bankruptcy reform. With reforms adopted by the CPA in 2004, Iraq now has a sound legal framework for bankruptcy and insolvency. However, a combination of legal and cultural factors limits its application. This should be addressed by a few key amendments in combination with a focus on capacity building in the implementing institutions and promoting awareness of bankruptcy as a remedy.

- The Bankruptcy Code should be amended to streamline the discharge of debtors by providing for more automatic discharge. The requirement of newspaper publication of both bankruptcy judgments and applications for discharge should be eliminated.

- Law No. 22 of 1997 on State Companies should be amended to apply Bankruptcy Law provisions to state-owned enterprises in order to create a transparent process for the liquidation, reorganization and sale of state- owned enterprises.

- The Higher Juridical Council should appoint a dedicated, trained cadre of bankruptcy judges, at least one in every governorate, as required by CPA Order 78.

Beyond the changes recommended above, the Penal Code should also be amended to eliminate criminal prosecution for negligent bankruptcies. Finally, training and support for lawyers' associations, business associations and other organizations is necessary to raise awareness of the benefits of bankruptcy law and procedures and reduce social stigma associated with bankruptcy. Over the long-term, if bankruptcy is used more frequently as a remedy, a specialized bankruptcy court should definitely be established, with exclusive jurisdiction over insolvency cases. Institutional assistance for the establishment of such a court could include training for bankruptcy judges and court personnel, as well as advice and commodity assistance to establish automated court asset registries and docket management systems.

Collateral Lending and Secured Transactions

The adoption in Iraq of modern collateral lending and secured transaction law is critical to the expansion of business and consumer credit and will be very important to economic development in Iraq. The absence of a law providing for a security interest in moveable property inhibits the extension of credit for the purchase of movable property and therefore, the equipment capitalization of Iraqi industry and the acquisition of goods by Iraqi consumers. The law should provide for registration of the security interest as well as easy execution and repossession by the lender of the moveable property in the possession of the borrower. A registry should be established to safeguard the record of the security interest.

- Finalize and enact a modern secured collateral and transactions law based on the proposed Law and Regulations of Consensual Charges on Movable Property.

- Harmonize the Civil Code of 1951, the Law of Commerce No. 30 of 1984, and the Company Law No. 21 of 1997 with the draft secured transactions law by amending relevant provisions and deleting contradictory provisions as needed.

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- Collateral pledge registry offices using best international practices in information technology and business processes should be established at the Public Notary Offices in Baghdad, Erbil, Sulamaniyah and Basra as soon as the new collateral law has been passed.

In addition, a modern computerized database should be established in Baghdad for registering nationwide security interests and sales of receivables and privileges. Collateral pledge registry offices in other locations across the country should be opened as soon as possible. Finally, public education will be important to spread awareness of a new mode of financing in a traditionally credit-shy country.

Competition and Consumer Protection

The adoption of modern and comprehensive competition and consumer protection laws will be very important to Iraqi economic development by establishing rules for fair play in the market and thereby enhancing market efficiency and consumer confidence. Currently, Iraq has neither a competition law to prevent monopolies and anti-competitive practices, nor a consumer protection law to prevent deceptive sales methods, including false advertising and the mislabeling of goods. Any laws drafted in these areas should take account of Iraq's WTO accession strategy as well as competition issues connected with future privatization of state-owned enterprises. Moreover, the promulgation of such laws in Iraq will also require the creation of new regulatory agencies to oversee their implementation.

- A competition law should be drafted and enacted to proscribe predatory pricing, anti-competitive market consolidation, and the formation of monopoly cartels, and to establish an independent competition enforcement agency that can prosecute cases against suspected violators.

- A consumer protection law should be drafted and enacted to protect the public against deceptive marketing practices and the sale of mislabeled, impure and hazardous products. During the drafting process, the proposed law should be checked for compliance with the WTO Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) agreements.

- The establishment of new agencies to implement the competition and consumer protection laws is a high priority and will be greatly facilitated by international donor assistance to provide exposure to existing regulatory institutions in other countries and intensive training of Iraqi staff. As a possible costs savings measure, it may be possible to establish the new consumer protection institute within the existing standards institute – the Central Office for Standards and Quality Control (COSQC).

Developing a full set of competition and consumer protection regulations and building the capacity of the new regulatory agencies to implement them properly will require a substantial effort over the mid- to long-term. Further, if Iraq does intend to join WTO, all such regulations must be carefully monitored for WTO compliance. International expert advice, especially in relation to the SPS and TBT agreements, will be important in ensuring minimizing problems that could impede Iraq's WTO accession.

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Foreign Investment

Reform of the legal structures for foreign investment in Iraq will be a critical step in attracting foreign direct investment of capital, technology, material and expertise, which is very important to developing the Iraqi economy. Ba'athist ideology resulted in laws and a political culture that were hostile to foreign investment. Even though the CPA passed important legal changes to liberalize the treatment of foreign investors, significant restrictions remain. The primary example is a ban on foreign ownership of real property, potentially prohibiting not only direct purchase of real property, but also of shares in Iraqi companies that own real property, which would effectively bar foreign investment in most substantial industrial and agricultural enterprises, and could significantly constrain economic development. Iraq now has the opportunity to finalize and pass a law that incorporates international best practices, tailored to Iraqi circumstances, and is capable of supporting a regionally and internationally competitive investment promotion strategy as political and economic conditions improve.

- The draft Investment Promotion Law should be finalized and enacted to establish that Iraq provides the key legal elements required to encourage foreign direct investment: equal treatment of local and foreign investors; guarantees against expropriation; free repatriation of capital and profits; and international arbitration of investment disputes.

- The Civil Procedure Code should be amended to provide for judicial recognition of foreign arbitral awards.

- An Iraq Investment Promotion Agency should be established to market Iraq to foreign investors internationally, and to facilitate the entry and operations of foreigners who have decided to invest in Iraq.

As foreign investment in Iraq begins to increase, consideration should be given to the establishment of a "one stop shop" for all governmental procedures applying to investors and their business operations. Additional steps to improve the investment environment would include accession to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, revival of the free zones program, and entry into appropriate bilateral and multilateral investment agreements and programs, including the World Bank Group's Multilateral Investment Guarantee Agency (MIGA).

International Trade

Reform of Iraq's trade laws will be important to the country's economic development by expediting the country's full participation in the global trading system. Iraq was isolated for many years from international trade and the governing legal trade conventions as a result of the autarchic policies of the Ba'athist government and international sanctions. To reorient an oil-based, statist economy to a diversified open economy will require fundamental institutional reform as well as adherence to international trade law norms and conventions. The most important first steps involve dismantling the Ba'athist-era trade and transportation bureaucracies, eliminating duplicative and unnecessary controls on imports and exports, and reforming the customs system.

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- The Law of Regulation of Trade No. 20 of 1970 and all import and export licensing requirements of the Ministry of Trade should be repealed in order to remove unnecessary impediments to trade and reduce opportunities for corruption.

- Revisions to the Customs Law of 1984 should be enacted to harmonize it with the WTO Kyoto Convention and GATT customs valuation standards.

- The Law of Transportation No 80 of 1983 and its implementing regulations should be revised to eliminate the state supremacy provisions in Article 2 and in the ministerial regulations.

- The Law of Commerce No. 30 of 1984 should be amended to update definitions of negotiable instruments and letters of credit and provide provisions for electronic payments and electronic signatures in accordance with international practice.

- As a part of the legislative and institutional reform processes, border import inspection functions for agricultural and industrial products should be centralized within the General Commission on Customs.

Over the medium to long-term, the Ministry of Trade should be transformed from a trade control to a trade promotion agency, with training for staff and organizational restructuring. Training and assistance should be provided to upgrade the capacity of Customs personnel and information technology systems. A modern body of maritime law and other carriage of good laws should also be drafted, including modern port state control and maritime safety laws to harmonize Iraq's port and maritime regulations with IMO and other international standards. Iraq should continue to work with the WTO to meet requirements for full membership on a reasonable timetable. Iraq should also accede to the Montreal Convention of 1999 and make necessary amendments to provisions of the Law of Transportation regarding international rules for air carriage liability

Intellectual Property

The development and enforcement of a legal structure protecting intellectual property rights will be important to the development of Iraqi entrepreneurial activity, the attraction of foreign investment, and integration of Iraq into the global economy. The protection of intellectual property is a necessary adjunct to trade agreements and the reciprocal opening of markets. The CPA enacted a comprehensive intellectual property regime, with amendments to the trademark, copyright and patent laws in order to bring Iraq's laws up to date with international standards. The main issues for the foreseeable future concern the lack of enforcement, due to excessive statutory penalties and the limited institutional capacity of the trademark, patent and copyright registries.

- The Trademark and Copyright laws should be amended to revise mandatory penalties for infringement downward and restore judicial discretion in order to bring penalties to a realistic, enforceable level linked to the value of the counterfeit goods in question.

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- The institutional capacity of the trademark, copyright and patent registries should be enhanced through training and improved business processes and information technology, integrated with an overall strategy for improved IP enforcement activities.

In addition, over the medium term, a dedicated intellectual property enforcement unit should be organized within the Ministry of the Interior, or as an adjunct to the Ministry of Trade or Industry. Iraq should also accede to the main intellectual property conventions that it has not yet joined, in particular the Berne Convention on Copyright, and the Nice Convention on the Classification of Goods and Services. Support should be provided to civil society organizations of artists, writers, scientists, engineers and others with a stake in intellectual property protection, to assist those organizations in developing public information campaigns that describe the value of intellectual property.

Labor and Employment

Labor and employment law reform that achieves a good balance of protections for workers and flexibility for employers in Iraq will be too important to generate investment, employment, and economic growth within a socially just and stable society. The legacy of Ba'ath era labor laws continues to be a significant constraint on the private sector. Work rules are unnecessarily restrictive and union organizing has no legal framework. The priorities in the area of labor and employment law will be the enacting of implementing legislation for Article 22 of the August 28, 2005 draft constitution, and the creation of implementing institutions for those laws. Specific priorities include the following:

- The Ba'athist Union Law should be repealed and replaced with a new law providing the right to organize and bargain collectively, in accordance with the ILO Conventions on Freedom of Association and the Protection of the Right to Organize (1948) and Right to Organize and Collective Bargaining (1949).

- The new draft labor law should be finalized and enacted to modernize Iraqi labor law and bring it into compliance with the International Labor Organization's (ILO) Termination of Employment Convention of 1982 and to eliminate the state's exclusive agency in employment.

- Technical assistance should be provided to MOLSA in the implementation of the new labor law and the development of capacity building programs in its Industrial Relations and Social Dialogue Department.

In addition to the above, a review of the operations of the Labor Courts should be conducted and a blueprint for institutional reforms developed. Technical assistance should also be provided to trade unions in conjunction with the International Confederation of Free Trade Unions and to business associations and employers, via the USAID-supported Business Centers and the Iraqi American Chamber of Commerce, in complying with the new labor law and educating their members and employees. Ongoing reviews of the labor and employment laws should be conducted and technical assistance in revising and amending the laws should be provided as necessary. In conjunction with

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this legal reform process, public conferences and discussions should be organized with the participation of chambers of commerce, business associations, labor unions, civil society organizations, and the Iraqi government.

iii. Tabular Summary of Recommendations

For quick reference and ease, the following provides a brief tabular recap of the recommendations made in this CLIR assessment report and discussed above.

Legal Area	*Recommended Immediate Actions*	*Recommended Mid/Long-Term Actions*
General Recommendations	• Upgrade court facilities and systems • Appoint more judges to meet demand • Build capacity of regulatory and enforcement agencies • Encourage the re-enactment of the 2003-2004 economic reforms by the elected Iraqi government	• Establish a Commercial Law Reform Commission • Assist National Assembly and staff with legislative drafting skills • Clarify commerce regulatory functions of federal, regional and local government • Harmonize and codify Iraqi law by subject matter
Contract and Sales	• Repeal the Law of Regulation of Trade No. 20 of 1970, RCC Resolution 483 and other unnecessary import and export licensing rules	Enact: • A movable property leasing law • A franchising law • A law for the recognition of foreign arbitration awards
Companies	• Amend the Law of Commerce of 1984 to simplify company naming procedure and eliminate the requirement of ministerial approval for company registration • Continue training and capacity building for company registries	• Refine the company law with amendments or enact a new law • Apply the latest Company Law throughout Iraq • Clarify whether company registration is a federal, regional or local function
Agency	• Clarify, amend, or replace the Commercial Agency Law of 2000	• Repeal or amend Law of Registration Agents No. 4 of 1999 • Amend Article 52 of the Civil Procedure Code of 1969 to allow attorneys a wider scope of action
Bankruptcy/ Insolvency	• Designate a cadre of bankruptcy judges • Amend the Bankruptcy Code to extend its provisions to state-owned enterprises, streamline the discharge of debtors and eliminate the requirement of newspaper publication of bankruptcy judgments and applications for discharge	• Amend the Penal Code to remove criminal punishment for negligent bankruptcies • Establish a specialized bankruptcy court and provide training and information technology assistance to court personnel • Conduct public education to improve understanding of bankruptcy and reduce stigma
Collateral Lending and Secured Transactions	• Enact the draft collateral and secured transactions law • Establish a secured transactions registry with a national database	• Promote public awareness of secured lending for movable property

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Legal Area	*Recommended Immediate Actions*	*Recommended Mid/Long-Term Actions*
Competition and Consumer Protection	• Enact the draft consumer protection law • Draft and enact a competition law • Establish a competition enforcement agency before or in tandem with privatization of state-owned enterprises	• Establish a consumer protection agency or build the capacity of the Central Office for Standards and Quality Control to enforce the consumer law • Build the capacity of the competition enforcement and consumer protection agencies
Foreign Investment	• Enact the draft investment promotion law and establish an investment promotion agency • Mitigate restrictions on foreign ownership of real property by allowing indirect ownership through majority or minority ownership of Iraqi companies	• Revive existing free trade zones and establish new ones if desirable • Promote public discussion of the issue of foreign investment and its value to Iraq. • Amend the Civil Procedure Code to provide for the recognition of foreign arbitral awards.
International Trade	• Repeal the Law of Regulation of Trade No. 20 of 1970 to eliminate import and export licensing requirements • Revise the Customs Law of 1984 to harmonize it with the WCO Kyoto Convention and GATT customs valuation standards	• Train customs personnel in modern customs information systems. • Consolidate border import inspection duties within Customs • Revise the Law of Transportation No 80 of 1983 to eliminate state control and monopoly on import documentation and inland transportation
Intellectual Property	• Revise the penalty provisions of the Trademark and Copyright laws downward to bring them to a realistic, enforceable level • Survey the current requirements of the trademark, copyright and patent registry and develop an assessment of their business processes and information technology needs.	• Establish and train an intellectual property protection office • Develop civil society organizations of stakeholders in intellectual property, and public education campaigns • Accede to the Berne Convention on Copyright, and the Nice Convention on the Classification of Goods
Labor and Employment	• Repeal Law No. 52 of 1987 and replace it with a law guaranteeing workers' right to organize and bargain collectively • Revise Law No. 71 of 1987 to provide more flexibility in workplace rules and eliminate the state's exclusive agency in employment	• Assist the Ministry of Labor and Social Affairs, trade unions, and employers in the implementation of new labor laws • Examine the operation of the Labor Courts, making recommendations for institutional reform as necessary

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1.0 INTRODUCTION

1.1 Background and Objectives of Assessment

This Commercial Law and Institutional Reform (CLIR) report was prepared by the Iraq Economic Recovery, Reform and Sustained Growth ("Economic Governance II") Project funded by the United States Agency for International Development (USAID) and implemented by BearingPoint. It is based on the established USAID methodology for such reports as provided in the CLIR Diagnostic Methodology Handbook.[1] The report covers the central issues of commercial law: contract and sales; companies; commercial agency; bankruptcy and insolvency; collateral lending and secured transactions; competition and consumer protection; foreign direct investment; international trade; intellectual property; and labor and employment. The information it contains is based on a review of the major laws affecting the regulation of the economy, and a series of discussions held with Iraqi lawyers and officials in the Ministries of Trade and Justice.

1.1.1 Purposes of this Assessment

This commercial law assessment has four purposes. The first is to sort through the various and scattered influences on the law in Iraq today. The multiple sources and philosophies of the pre-war body of Iraqi law pull the economy in competing directions: some towards the international free market; some towards autarchic policies; while others towards centralized state ownership, planning and control.

The second purpose of this report is to suggest how to improve public perception of the commercial legal system, which is vital for investor and entrepreneurial commitment to Iraq. Perceptions of the legal framework of Iraq will have a great effect on the growth of business and investor confidence.[2] In August 2003, the Iraqi American Chamber of Commerce conducted a survey of 393 Iraqi small and medium business proprietors throughout Iraq for the Center for International Private Enterprise (CIPE),[3] and found that "legal uncertainty" and "lack of economic laws" were rated highly as issues "most important for their business" by a clear majority of respondents.

Third, this assessment adds to the cooperative action within and between the Iraqi government and donor nations towards a comprehensive commercial law reform plan. While the Iraqi government is now primarily engaged in the very difficult tasks of writing a constitution[4] and restoring security and basic services, a reform of business laws will rise in importance as the new Iraqi government gains confidence and seeks the prosperity that brings stability. This reform starts with a recognition that the economic health of a country depends upon its legal environment and its institutions. This concept is central to the New Institutional Economics, which examines a system's culture, law, and

[1] Available at http://inside.usaid.gov/eg/resources/sows/lir_sows/clir-v2.htm See http://www.bizlawreform.com/assess_Country.htm for examples of individual country assessments.
[2] Atallah, et al., *Building a Sustainable Investment Climate in Iraq*, World Bank Paper, Sept. 2004
[3] IACCI, *Conditions and Expectations for Private Enterprise in Iraq*, August 2003, at http://www.cipe.org/pdf/iraq_survey_final.pdf
[4] Brown, *Post-election Iraq: Facing the Challenge*, 2005, at http://carnegieendowment.org/files/PO10.brown.final.pdf

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the operation of its institutions and markets as interrelated matters.[5] An attempt to identify the provisions and omissions in the law now, which obstruct economic growth, add to transaction costs and facilitate corruption, will speed action to correct those problems later.

Fourth, this assessment serves as a brief introduction into the current state of Iraq's commercial law for development planners, investors, legal practitioners and policy makers.

1.1.2 Context of this Assessment

The process of legal reform has already begun. The Coalition Provisional Authority (CPA) enacted many commercial laws, including new laws on company registration, foreign investment, intellectual property, banking and bankruptcy.[6] However, these laws have met with varying success in post-war Iraq due to a lack of institutional implementation capacity within government agencies, as well as bureaucratic resistance and doubts as to their legal force. Future commercial law reform efforts should therefore include ratification by the sovereign Iraqi government of important CPA commercial law enactments and sustained efforts to ensure their implementation.

With sovereignty, a newly elected government and a National Assembly, Iraqi law continues to evolve. Drafts of the new Iraqi Constitution are being written and circulated by a committee of the National Assembly elected in January 2005. These drafts guarantee due process and the rights to property and support the role of private investment and commercial activity in economic development. Generally, it appears that the new constitution will continue the trend to a more market-friendly legal structure in Iraq.

While this report attempts to capture a view of Iraq's most important commercial laws and regulations as of fall 2005, there are multiple proposals for change from both within and outside of the Iraqi government and polity, which may soon render information found in this report out of date. We therefore strongly recommend that anyone considering taking action based on this report should conduct a diligent review of Iraq's Official Gazette and consult with experienced Iraqi lawyers.

1.2 The Iraqi Legal System

The future prosperity of Iraq will require a fundamental shift from a socialist to a free market orientation and the concomitant creation of a supporting legal and institutional framework. The current legal structure is an agglomeration of disparate laws drawn from a consecutive series of Ottoman, royal and Ba'athist legislation, CPA orders, and a few new enactments by the interim Council of Ministers and the Transitional National Assembly. The following brief review of the sources and structure of the Iraqi legal system and its institutional frameworks is provided to help explain the context for needed commercial law reforms.

[5] Klein, Peter G., *New Institutional Economics*, in Bouckeart and De Geest, *Encyclopedia of Economics*, Ghent, 1999, available at http://users.ugent.be/~gdegeest/0530book.pdf; Joskow, Paul L., *New Institutional Economics, a Report Card*, speech to International Association of New Institutional Economics, 2003 available at http://econ-www.mit.edu/faculty/download_pdf.php?id=766

[6] At http://www.iraqcoalition.org/regulations/ until June 30, 2006

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1.2.1 Sources and Structure of Law

The formal sources of Iraqi law begin with Islam and the Qur'an. "The Islamic heritage still has a direct relationship with the modern Iraqi legal system."[7] The Qur'an, as a general moral guide to God's will, has few specific rules on how to conduct business.[8] Most specific provisions of Islamic law or *shari'a* (the path) developed from the recounting (*hadith)* of the habits and actions of the Prophet Muhammad, his successors and the traditions of the community. These were then interpreted by a number of jurisprudents that established "schools" of law based on systems of thought (*fiqh)* which differed in the extent to which they gave relative weight to the Qur'an, *hadith* of varying credibility and authority, and the traditions of the community.[9]

The schools also differed in their application of human reasoning, which some limited to reasoning by analogy to the Qur'an and *hadith,* and others broadened, to a fuller application of independent judgment, known as *ijtihad.* In all but the most extreme schools, *shari'a* law's basic emphasis on repayment of debts, honesty, respect for private property and duty to perform obligations makes it generally compatible with a modern market economy. Despite this basic compatibility, some interpretations of *shari'a* rules on the charging of interest, the role of women, the sale of alcohol, the playing of music and other entertainment could have a significant impact on Iraq's economic future.

For most of the Ottoman period, this body of *shari'a* law, coupled with local and tribal customs, was the only source of law in Iraq. Efforts at reform beginning in 1840 led to several codes, including civil and criminal procedures laws, a penal code, the *Majallat* or Civil Code, and the Maritime Code of 1863, drawn from both Islamic and European sources. After the fall of the Ottoman Empire, a period of direct and indirect British rule led to new enactments and legal system reforms. The British introduced a new company law in 1919 based on the British Indian company law, and a penal code that remained in force until 1957 and 1969, respectively.

Iraq began to enact its own laws in the 1930s after formal British rule ended. These laws were influenced by Egyptian laws, because many Iraqi lawyers had studied in Egyptian law schools. In a situation not unlike the current one, the Iraqi legal profession recognized that the cumulative effect of the various Ottoman, British and Egyptian-based Iraqi enactments created confusion, and a legal reform commission was established in 1936 to harmonize Iraqi civil law. The commission adapted the *Majallat* with other Islamic sources and the Egyptian Civil Code of French and German origin and synthesized them into the Civil Code of 1951, which continues today to provide the governing principles for Iraqi law.[10]

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[7] S.H. Amin, *The Legal System of Iraq,* Glasgow 1989, p. 64

[8] See e.g. Qur'an 2.282 "O you who believe! when you deal with each other in contracting a debt for a fixed time, then write it down; and let a scribe write it down between you with fairness"

[9] Hourani, *A History of the Arab Peoples*, Cambridge, MA 1991, pp. 65-91; S.H. Amin, *The Legal System of Iraq,* pp. 75-99

[10] Jwaideh, *The New Civil Code of Iraq,* 22 George Washington L.R. 176, 1954; S.H. Amin, *The Legal System of Iraq,* Glasgow 1989, p. 160. Note that the Civil Code, while taking many of its provisions from the Hanafi school through the *Majallat,* expressly states it is not "bound by any particular school of jurisprudence," which allows judges to apply reasoning in accordance with the Shi'a Ja'fari or other schools in making decisions.

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The overthrow of the monarchy in 1958 started a trend towards more socialist and nationalist laws, including laws providing for the expropriation of foreign-owned property and greater state control over private enterprise. The later accession of the Ba'athist party in 1968 initially intensified this trend. Examples of early Ba'athist enactments are the Law of Regulation of Trade No. 20 of 1970 and the Law on Legal Reform No. 35 of 1977, which emphasized State authority over individual rights.

These attitudes are reflected to some extent in the Law of Commerce of 1984, but the Civil Code itself was not amended during this period in any significant degree, except to abolish some forms of feudal-style land ownership. Other laws subordinated private enterprise to state planning and limited foreign investment drastically. Later enactments of the Ba'athist regime reversed this trend somewhat. For example, Law No. 3 of 1998 on Free Zones and Law No. 20 of 1998 on Industrial Investments exempted manufacturing enterprises from taxes for up to ten years, attempting to revive an economy that was desperate for capital.

Concurrently enacted with the Ba'athist laws were a few laws and provisions taken from Western sources, including international conventions. Examples include most of the Law of Commerce No. 30 of 1984, which is drawn from the US Uniform Commercial Code (UCC), and the maritime carriage provisions of the Law of Transportation No. 80 of 1983, which are an abbreviated version of the UN Convention on the Carriage of Goods by Sea (Hamburg Rules).

Finally, the Coalition Provisional Authority (CPA) enacted a large body of new laws on company registration, banking, intellectual property, foreign investment and anti-corruption measures. The authority of these laws varies according to Iraqi government attitudes, resources for enforcement, and the willingness of the Iraqi government and international advisors to provide the training, equipment and political capital to implement them. Since regaining sovereignty, the Iraqi government has passed some additional legislative enactments, but most legislative energy continues to be discharged in the effort to draft and adopt a constitution.

The basic structure of Iraqi law reflects the dissonance in its historical sources and associated legal philosophies. This dissonance is expressed by a lack of clarity in the organization of the corpus of Iraqi laws and in ambiguity within the statutory language of the laws themselves. In general, laws are organized chronologically, by year and number (e.g. Law No. 80 of 1983), as published in the Official Gazette, and not taxonomically codified by subject matter. By contrast, in a taxonomically organized code, laws are organized and published by specific subject matter, and care is taken to ensure reconciliation with prior legislation. A taxonomically organized system makes relatively clear which legislation is outstanding and currently in force. Iraq's legislative organization provides no such guidance.

This situation is further complicated by the fact that language used in Iraqi legislation is unusually ambiguous by international standards. The Iraqi legal system is a "civil law" system, as are the legal systems in continental Europe, the Middle East, Latin America and most of the non-English speaking world. Clarity in statutory language is paramount in a civil law system because its jurisprudence relies heavily on statutory law and regulations with very limited precedential value given to prior court decisions. Unfortunately, there are many examples in Iraqi law where terms are

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undefined and provisions are vague. This served the purposes of the prior regime, as vague laws give officials wide discretion in their administrative decisions and judgments.

This legacy represents a significant challenge for the reconstruction and development of the Iraqi economy. Laws and regulations must be modernized, rationalized and harmonized, both with each other and with key international conventions, if Iraq is to emerge as an economy that empowers the private sector to generate employment and growth, and actively participates in the world economy through trade and investment. Addressing these challenges will require extensive legal analysis, careful policy planning and technical drafting skill, along with ongoing capacity building within the judiciary and other government institutions charged with implementing Iraq's body of laws.

1.2.2 Institutional Frameworks

The role of the courts as competent and impartial adjudicators under the law is essential to the functioning of a market economy. Fortunately, Iraqi law now supports the principle of an independent judiciary. A series of CPA enactments removed the Ministry of Justice's authority over the courts and authorized the Higher Juridical Council to administer the court system. There have been conflicting reports as to whether this only includes judges or all clerks and support personnel as well.

The Iraqi court system has an organizational structure that is similar to most other civil law systems, consisting of criminal, civil and appellate courts. Criminal courts include the following: (1) investigative courts; (2) misdemeanour courts for lesser offences; (3) local felony courts, with a three-judge panel; (4) juvenile courts; (5) the Central Criminal Court of Iraq, established by the CPA, with nationwide felony jurisdiction; and (6) the Special Tribunal for trial of former regime members.

Civil courts consist of: (1) Magistrate's courts for small claims; (2) Courts of First Instance for general civil claims; (3) Courts of Personal Status for divorce and family matters; and (4) Labor Courts for cases under the Labor Code.

Appellate courts include: (1) Courts of Appeal in every governorate for all civil matters and misdemeanour criminal cases; (2) the Court of Cassation in Baghdad, for appeal of adult and juvenile felony cases and further appeal of civil matters; and (3) the nascent Federal Supreme Court, established by Article 44 of the Transitional Administrative Law, for constitutional issues as well as matters given jurisdiction by law.

A separate judicial institution established by the CPA is the Iraq Property Claims Commission (IPCC), which consists of a number of local panels that hear the claims of persons whose property was seized by the regime and its members without due process.

In May 2005, there were 351 judges in Iraq, up from 175 in June 2004.[11] This is a definite improvement but remains inadequate for a country of 25 million people in which judges not only decide cases, but also perform many of the investigative duties that prosecutors generally handle in many other countries. The Higher Juridical Council and the Judicial Training Council have been

[11] Brookings Institution, *Iraq Index*, p.25, August 4, 2005, available at http://www.brookings.edu/iraqindex

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considering waiving the two-year training requirement for new judges in order to fill vacancies more quickly, but are understandably concerned that placing under-trained judges may not be a satisfactory answer to the problem of too few judges.

In addition to the courts, several government ministries are critical players in the implementation of the legal system in Iraq. The Ministry of Justice retains responsibility for prisons; land registries, foreign litigation involving Iraq and its state-owned entities as parties, operation of the Judicial Training Institute, execution on civil judgments, and publication of the Official Gazette. The Legal Consultation Board or *Shura* within the Ministry of Justice renders opinions on legal issues before the government, including new legislation and the conduct of foreign litigation. The board is comprised of experienced private lawyers who have been retained on a part-time basis.

The Ministry of Trade operates registries for companies and commercial agents, and has regulatory authority over the economy and prices under the Law of Regulation of Trade, mostly through the Board of Regulation of Trade, a body under the Council of Ministers. The Ministry of Industry is responsible for the registration of trademarks, while the Ministry of Culture registers copyrights, and the Central Office for Standards and Quality Control of the Ministry of Planning is the patent registry.

The Iraqi Federation of Chambers of Commerce (IFCC) is an important supporting institution within the commercial arena. The IFCC operates business name registries and has regulatory functions under the Law of Commerce. The process of changing the role of the Chambers of Commerce from a governmental agency registering and controlling business to that of an independent advocate for business was started during the CPA with the establishment of Business Centers in Basra, Hilla, Nineveh and Baghdad.

1.2.3 Legislative Reform Setting

The Iraqi justice system, to support the rule of law, must recover and improve along three axes: the physical buildings housing the system, the government officials running the system, and the laws and regulations by which the system runs. Of the three, changing old attitudes and habits, and encouraging a new, open system of due process in the minds of the people running the system will probably be the most challenging task.

There is recognition within the Iraqi government and civil society that legal reform is necessary. Earlier this year, the Ministry of Trade reportedly proposed an interministerial commercial law reform committee, and Iraqi legal scholars have circulated draft laws on at least the subjects of maritime law and consumer protection. Thus, the setting and the prospects for reform are good, but await some permanence in the political system and legislative mechanisms of Iraq, which are in suspense until a new constitution is ratified. Under Chapter 3, Article 59 of the proposed constitution of August 28, 2005 and Chapter 4 of the Transitional Administrative Law (TAL), the National Assembly does have full legislative authority, but the extent to which the central government will devolve authority under a new constitution is still uncertain.

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2.0 CRITICAL COMMERCIAL LAW AREAS

This section of the Commercial Law Assessment provides a detailed analysis of ten different areas of commercial law in Iraq. While these legal areas are not necessarily all equally critical to economic reconstruction and private sector development in Iraq, each section nonetheless constitutes an important part of the enabling environment for economic activity. Each legal area has its own unique features, but the report strives to present information in a reasonably consistent fashion. Every section begins with a brief introduction to the specific legal area, explaining what this area of law seeks to accomplish under international best practices and why it is important, or very important, to economic development in Iraq. More detail is provided in three-subsections: Legal Framework, Implementing Institutions and Suggested Next Steps. The Legal Framework subsection analyzes the main sources of law, comparing them to international best practices, and identifying important legal deficiencies. The Implementing Institutions subsection identifies and analyzes the ministries and other agencies responsible for enforcing or implementing specific laws, and where appropriate also discusses supporting institutions, including nongovernmental bodies. The Next Steps subsection recommends specific legal reforms, organized by urgency and time required into three categories – Immediate Steps, Intermediate Steps, and Long-Term Steps. Throughout, legal citations to specific statutory articles are provided where such reference is deemed helpful.

2.1 Contracts and Sales

The law of contracts and sales is the foundation of commerce: merchants and buyers must have confidence that their mutual promises to sell and buy goods or perform services at a particular price can be enforced. Under international best practices,[12] contract law should state clear principles for the construction and enforcement of contracts, allow free transactions between parties, and foster adherence to a duty of good faith and fair dealing. In Iraq, contract law reform will be very important in ensuring that laws and practice support, rather than hinder, private sector commercial activity.

2.1.1 Legal Framework

Iraqi contract law has a basically sound underlying legal basis in the Civil Code of 1951, although it is marred by several subsequent enactments that were adopted during the Ba'athist regime. In general, the articles of the Civil Code that describe formation of contracts are similar to laws in other countries based on civil law systems that are, for the most part, consistent with international best practices. These Civil Code provisions allow for the creation of a contract by the manifest conduct of the parties and the use of commercial custom in the interpretation of a contract. Article 73 of the Civil Code gives the basic definition of contract as offer and acceptance:

[12] "International best practices" for contract law means those legal principles, which are generally recognized as beneficial to free and fair contracting. *See* UNIDROIT Principles of International Commercial Contracts, 1994, http://www.unidroit.org/english/principles/contracts/principles1994/fulltext.pdf ; Principles of European Contract Law, 1999, http://www.storme.be/PECLre.html; the Uniform Commercial Code of the United States, and the Restatement (Second) of Contracts, http://www.ali.org/ ; U.N. Convention on Contracts for the International Sale of Goods (CISG), http://www.uncitral.org/uncitral/en/uncitral_texts.html

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> A contract is the union of an offer made by a contracting party with the acceptance of another party in a manner which establishes the effect thereof in the object of the contract.

Formalism and literalism are rejected in the Iraqi theory of contract. While they do not differ much in effect from international norms, Iraqi contract construction principles, derived in part from the *shari'a,* are sometimes stated in somewhat abstract language. The emphasis is on discerning the intent of the parties. For example, Articles 155 and 156 of the Civil Code state:

> Article 155: (1) In contracts, intentions and meanings must be implied and words and forms (constructions) must be disregarded. (2) Basically words imply the reality, but if the literal is impossible they will imply the metaphor.
>
> Article 156: The literal is disregarded where custom indicates otherwise.

The Civil Code contains very detailed specifications defining express and implied warranties in sales, rights after insolvency or death or a party, delivery of sold goods, barter and gifts, including the return of dowries.[13] Delivery terms such as "free on board" (FOB), "cost, insurance and freight," (CIF), etc. are defined in the Law of Commerce No. 30 of 1984, Articles 294 – 333, rather than the Civil Code. All of these specifications and definitions are generally consistent with international practices. In addition, there is a doctrine of alternative dispute settlement or conciliation (*solha)* that can operate in ways similar to the Anglo-American common law doctrine of quasi-contract, allowing obligations to be created after the fact where one party has been unjustly enriched at the expense of another.[14]

The Iraqi Civil Code is also consistent with international best practices in that parties to a contract have an obligation to perform in good faith, with exceptions in certain situations. For example, printed form contracts are construed against the party proffering them and can be modified by the court to remove unconscionable or unreasonably burdensome provisions. Contracts by incompetent persons such as minors and insane people are void as a matter of law, as are contracts that are impossible to perform. An Iraqi contract can be made unenforceable by duress or *force majeure*. However, since *force majeure* is undefined in the law, commentators have recommended that it be defined in the contract. In addition, circumstances of "a widespread and general nature" that frustrate performance of a contract may relieve the party of full or partial performance. Drafters of commercial contracts would in many situations be well advised to define this term as well.

Unlike most modern common law and civil law based court systems, which primarily require payment of damages as a remedy for breach of contract, an Iraqi court's preferred remedy is compelling specific performance of the contract requirements. Liquidated damages can be ordered as an alternative to specific performance if allowed by the contract and if specific performance is not possible. A party may also rescind the contract in response to a breach by the other party.

[13] Articles 506 - 625, Civil Code of 1951
[14] Articles 698-721, Civil Code of 1951

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"Moral" damages corresponding to emotional distress damages are also allowed by law, but damages awarded by a judge will not exceed the amount demanded in the complaint. Interest on accounts due specified by contract is limited to seven percent; if not specified by contract, it is limited to four percent in consumer transactions and five percent in commercial transactions. While these provisions and practices are not consistent in all respects with international best practices, they are expressions of societal and cultural values found in the laws of several other Arab and Islamic countries and, unlike those discussed immediately below, do not constitute a fundamental impediment to commercial activity in Iraq.

The major contract law impediments to commercial activity in Iraq stem from legislative enactments were adopted during the Ba'athist era that inhibit freedom of contract by imposing state planning or approval requirements for economic activity, and are still on the books. Although many of these laws are not presently enforced, they contribute to legal uncertainty and could potentially be revived if they are not definitively repealed. If enforced, these laws would impede investment, drive business into the underground economy, and provide opportunities and incentives for corruption. The following laws and provisions represent a serious danger to the reestablishment of an enabling environment for commercial activity and should be repealed at the earliest possible opportunity:

- Law on Regulation of Trade No. 20 of 1970, which requires that prices be set in accordance with government mandate by the Ministry of Trade and that imports be licensed, imposing harsh criminal penalties for violation.
- Law on Commerce No. 30 of 1984, which provides for the state supervision and review of contracts requirements and requires that books of traders be kept and inspected on an annual basis by state authorities for that purpose.

- Revolutionary Command Council resolution No. 483 of 1987 on export of industrial goods, which requires approval and review of export contracts by the Ministry of Trade and also requires repatriation of 60 per cent of the export's value.

In addition to the above, the body of Iraqi contract law has other gaps and omissions that should be corrected, but are not a high priority for urgent reform because they have little immediate effect on commercial activity in the current environment. These include a lack of a leasing law for movable property, no law of franchises, a limit on fixed-term annuities to a term of fifteen years, and the lack of enabling law to enforce international arbitration clauses and the resulting international arbitration judgments. There is also no Iraqi law on the regulation of electronic commerce.

2.1.2 Implementing Institutions

Ideally, contract law should require very few implementing or supporting institutions. Where the legal framework is clear, government intervention is minimal and a culture of trust prevails, contracting parties fulfill their obligations without assistance. While Iraq is largely a cash-and-carry economy now, any expansion of commercial and consumer credit will require a greater awareness and strengthening of contract law and more use of written contracts.

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When institutional intervention is necessary, the primary implementing institutions are the courts, which can, as noted above, construct, modify and order specific performance of contracts. A strong court system gives confidence to parties that contracts and laws will be enforced. Rebuilding the Iraqi court system is a priority, but in the mean time, the court system suffers from lack of capacity and associated delays in adjudicating commercial cases. Reportedly, cases can move from filing to judgment in about two years, but this may be due in large part because relatively few civil cases are being brought due to a lack of confidence or patience with the delay. Expansion of the judiciary, capacity building for judges and other civil court personnel, and modernization of case management systems are all sorely needed.

Alternative dispute resolution, such as arbitration of commercial disputes, is a possible solution to the present weaknesses of the court system. The Civil Procedure Code, Articles 251 – 276, allows for judgments through arbitration. Arbitration agreements must be in writing. Panels of arbitrators are available through the Iraqi Union of Engineers, the Iraqi Federation of Industries, and through private arbitrators. Under the previous regime, Iraq established a specialized arbitration system for construction contracts modeled on the International Federation of Consulting Engineers (FIDIC: Fédération Internationale des Ingénieurs-Conseils) standards and procedures, but not governed or administered by FIDIC. *Shari'a* based arbitration is also reportedly possible, using the Qur'an and *Sunna* as rules of decision.

While the law of domestic arbitration is well developed in Iraq, international arbitration is not well supported by Iraqi law. Iraq is a signatory to the Arab League Convention on Commercial Arbitration (1987) and the Riyadh Convention on Judicial Cooperation, but has not signed or adopted the two most important legal instruments for international commercial arbitration: the New York Convention on Foreign Arbitral Awards (1958) and the attendant rules and procedural established by the U.N. Commission on International Trade Law (UNCITRAL). There is also no Iraqi law providing for the enforceability of contract clauses providing for international arbitration. Commentators have stated that the resistance to international arbitration has been motivated by the ground that it was a violation of the principle of sovereignty,[15] but one commentator has stated that foreign arbitral awards will be upheld in Iraq if ratified by a foreign court as a final judgment, with notice to the Iraqi party and if not conflicting with the public order.[16]

In addition, potential supporting institutions for a stronger contracting regime include the Iraqi Federation of Chambers of Commerce and local and specialty business associations. At present, under the Law of Commerce No. 30 of 1984, the Chambers of Commerce register and regulate businesses. This function is mostly duplicative of the Registrar of Companies and the licensing functions of local municipalities and is inconsistent with chambers of commerce being independent voices for business. Initial steps have been made to transition the Chambers of Commerce from their state role to an independent role, but this depends on a change in the culture, and possibly the management in the Chambers of Commerce.

Whether the Iraqi Chambers of Commerce continue to transition from a state regulatory agency to a component of civil society and advocate for business also depends upon regulatory reform and

[15] Saleh Majid, Paper, *Arbitration in Iraq*, 2004.
[16] *Overview and Prospects for Iraqi Arbitration*, Newsletter, Al-Tamimi & Company law firm, October 2004

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continuing aid to the Business Centers established by the CPA within Chambers of Commerce. Business Centers provide instruction on a variety of basic business practices and have been aided by the Center for International Private Enterprise (CIPE) and USAID. Chambers of Commerce and business associations can also foster greater reliance on fair written contracts by developing and promulgating standard form contracts for a variety of purposes.

2.1.3 Suggested Next Steps

Immediate Steps

- The Law of Regulation of Trade No. 20 of 1970 should be repealed as an immediate priority. This is a comprehensive price and economic control law that imposes penalties of up to ten years for such vague offenses as "dispos[ing] of . . . raw material in a matter not consistent with the purpose of its...import or supply."

- The Law of Commerce No. 30 of 1984 should be amended to revise provisions regarding traders in Articles 1 – 38. Priority should be given to eliminating Ba'athist language which asserts the state's primacy over private interests, such as Article 7, which give ministries control over private enterprise by sector of the Iraqi economy, including requirements to keep a paper ledger which must be notarized and inspected annually, and business registration requirements that are unnecessarily duplicative of the Law of Companies and local municipal licensing regulations.

- The onerous import and export licensing requirements of RCC Resolution 483 should be repealed. These rules require import and export licenses for all international commercial transactions. They are very burdensome by design, intentionally impede trade, and create opportunities for corruption in practice.

- All ministerial and local regulations requiring prior approval of private contracts should be repealed. Several ministerial and local regulations, some of which may be "hidden" under the current circumstances, should be repealed if they were drafted under restrictive Ba'athist principles.

Intermediate Steps

- A law on leasing of movable property should be enacted corresponding to international best practices. There is currently no such law in Iraq. While this is not urgent, it will be important in bringing Iraqi commercial law up to international standards.

- The Civil Procedure Code should be amended by adding new provisions that provide for judicial recognition and enforcement of international arbitration judgments agreed to under an arbitration clause in international commercial contracts. This law could be based on the UNCITRAL model international arbitration law.

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- There is a substantial need for expanding the judiciary and capacity building for civil court personnel and docket systems. The number of judges is inadequate to fulfill judicial roles as criminal investigating magistrates and trial judges, let alone civil trial judges. Continued capacity building training for court clerks, physical rehabilitation of court buildings and installation of information technology docket management systems will also secure and speed resolution of civil cases.

- Assistance should be provided to Chambers of Commerce and business associations in the development and promulgation of standard form contracts and training of business people and lawyers in formation of contracts and basic contract law at Business Centers. More awareness of basic contract law and the regularity provided by standard form contracts which are fair and free of "fine print" legalistic language could be beneficial to the domestic economy. General training and assistance to small and medium enterprises would be useful to promote the principles of free contracting.

Long-Term Steps

- At the appropriate time, efforts should be made to draft and enact a franchise law. Since franchising is a widespread practice in the global economy, a legal framework should be established to accommodate possible future investments by franchisors.

- Electronic commerce contract law provisions should be drafted and enacted by amending the Civil Code or in a separate law.

- As Iraqi commerce develops, further revisions to the Civil Code and Law of Commerce will be desirable to address emerging issues and fully harmonize them with international conventions and best practices. Further, as this effort progresses, an assessment should be conducted to explore possible combination of the Civil Code and Law of Commerce into one new code. This would be a large law reform project best undertaken under the leadership of an Iraqi law reform commission with international advisory assistance as needed.

2.2 Companies

Company law plays an important role in encouraging the formation of economically efficient arrangements for individuals and groups to do business as a legal entity rather than as individuals. Advantages generally include limited liability for owners, equity-sharing arrangements, access to financing, and in some cases tax advantages. Under international best practices, company law should provide choices among common corporate structures and make it administratively easy for investors to form and operate companies. In Iraq, company law reform will be important to encouraging private sector development and entry of informal small businesses into the formal sector.

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2.2.1 Legal Framework

Iraqi company law has its origins in Shari'a law and Ottoman law, and underwent modernizations in the 19th and early 20th centuries based on European continental (i.e., civil law) models, particularly French law. After achieving independence, Iraq continued the modernization process, over time adopting a body of company law comprised of a number of Western-influenced statutes. Iraqi company law reached something close to its current form with the 1983 Company Law, which was replaced by the similar, but not identical, Company Law No. 21 of 1997 ("The Company Law"). Iraq also passed Law No. 22 of 1997 on State Companies during the same year. These laws include a hybrid of internationally common company law concepts derived from the civil law tradition, merged with heavy-handed Ba'athist state control requirements.

In 2004, the CPA enacted a number of amendments to the 1997 Company Law and the 1997 State Companies Law. These were meant to remove the most obvious legal impediments to economic activity and reconstruction. However, the 2004 amendments were not intended to be permanent, but rather to be an interim phase until a new company law could be drafted. A new company law was drafted but never promulgated because of the great volume of other work the CPA needed to complete before it dissolved in June 2004. Thus, the 1997 Company Law, as amended by the CPA, remains in force in the current period and constitute the main body of Iraqi company law. As will be described below, the amendments provided major improvements to Iraqi commercial law, but some areas for further refinement remain.

Prior to its amendment, the Company Law had required the State ministry or other authority in a company's economic sector (the "sector authority") to approve company formation, capitalization, reorganization and liquidation; the company was also expected to conform to State economic planning policies. The amendments deleted requirements for such approvals by the sector authority, while company registration procedures now are to be based on conformity with legal requirements not with State economic plans. Further, the amendments were intended to reduce the time needed to register a new company, not only by eliminating steps such as approval by sector authorities, but also by reducing the time limits within which the Registrar was required to act on registration applications. Note, however, that un-amended provisions of the Law on Commerce No. 30 of 1984, containing detailed requirements for approval of a company's name and for registration with a chamber of commerce, limit the impact of these amendments as well as the amendments loosening Company Law restrictions on choice of name. These existing provisions of the Law on Commerce and paragraphs (1) and (2) of Article 208 of the Company Law allow the Minister of Trade to issue instructions to coordinate the activities of the Registrar of Companies and the Chamber of Commerce regarding the registration and approval of commercial names. A draft ministerial instruction is under consideration authorizing the Registrar to establish a mechanism, in cooperation with the Federation of Iraqi Chambers of Commerce, for reserving and approving trade names. Those new administrative procedures would accelerate the reservation and approval of trade names and thus the registration of new companies.

The 2004 amendments also eliminated the ban on non-Arab foreigners owning equity in Iraqi companies and, consistent with CPA Order 39 on Foreign Investment, sought to provide equal treatment for foreign investors. Note, however, that Order 39 also contains restrictions on foreign ownership of real estate and oil and extraction-related industries, as well as on foreign retail

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business. The Company Law amendments did not change these restrictions. As a result, the attempt to open Iraqi companies to investment by foreigners may be frustrated in some degree. The Company Law amendments also did not establish a system of registration for foreign companies, but left this to ministerial instructions issued under Order 39. Such instructions have been issued.

In addition, the 2004 amendments included numerous provisions intended to protect minority owners while increasing flexibility in ownership structure. Thus, the ban on one person owning more than 20% of a joint stock company was removed to increase flexibility, but at the same time a general provision was added that prohibits an owner from causing harm to his company in order to benefit himself or his associates at the expense of other owners. (Owners also are prohibited from withdrawing company capital or transferring assets to cheat creditors). Furthermore, conflict-of-interest provisions applicable to company officials were strengthened; quorum requirements for shareholder meetings were strengthened; and company "Contracts" (articles of association) were permitted to require larger majorities for company actions than those provided in the law. Other corporate governance provisions were added specifically for joint stock companies, such as the requirement for independent audit and compensation committees. The CPA's Interim Law on Securities Markets (CPA Order No. 74, amended in CPA Order 100) may also affect the rights of minority shareholders, since it gives the Interim Securities and Exchange Commission the authority to, among other things, promulgate rules protecting minorities in cases where one shareholder reaches 30% ownership.

The 2004 amendments also made other significant changes. The requirement for labor representation on joint stock company boards of directors was dropped. Further, the mandatory representation and rights of state representatives on the boards of "mixed" private/state companies was reduced, opening the possibility of the state owning a majority of a company's shares but being restricted to a minority of its board seats. The 2004 amendments also required payment in full for new shares, eliminating the installment payments possible under the 1997 Law. Additionally, in order to reflect the change in dinar values, the amendments adjusted the dinar amounts stated in the law for matters such as minimum capital and fines for violations, although the former were under-adjusted to keep capital requirements low and the latter were sometimes over-adjusted in the interests of enforcement.

Finally, Section 2(5) of CPA Order 64, which enacted the 2004 amendments, stated that the amendment provisions requiring action by a company's general assembly or board of directors must be implemented by the later or 90 days from promulgation of the Order (which would have meant by June 2004) or when the body's next meeting was held (or should have been held if it failed to hold a legally required meeting). Board members whose places were eliminated by the 2004 amendments were permitted to complete their current terms of office, but a new member provided for in the amendments could also be elected. The consequence of non-conformity with these requirements is not clear, nor is it clear that anyone actually conformed.

There is also an important question concerning the application of Company Law in northern Iraq. Even after the CPA passed its amendments to the Company Law of 1997, Kurdish officials in Sulamaniyah, who had never implemented the 1997 Company Law, continued to apply the 1983 Company Law. Officials in Erbil have been applying the Law of 1997 without the CPA 2004

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amendments. This raises not only constitutional questions but also various practical problems in those areas where the 1983 Law differed from the 1997 Law. For example, the 1997 Law exempts stock exchange transactions from the requirement that a company representative preside at a transfer of shares by sale. The 1983 Law has no such exemption because there was no stock exchange in 1983. Section 9(4) of the Interim Law on Securities Markets refers to the 1997 Law but not the 1983 Law, raising a question as to whether the latter could jeopardize the trading of Kurdish shares on the Iraq Stock Exchange. Kurdish regional authorities have recently issued decisions that the 1997 Law of Companies as amended in 2004 will apply throughout the region as soon as the information technology application matching the law as amended in 2004 is implemented by the Companies Registrar.

2.2.2 Implementing Institutions

The principal implementing institution for Company Law is the Registrar of Companies within the Ministry of Trade. The Registrar is given specific responsibilities in the Company Law itself and in administrative instructions issued by the Minister of Trade pursuant to the Company Law. Where foreign companies are involved, the Company Law defers in article 211 to instructions issued under CPA Order 39. CPA Order 46 amended CPA Order 39 to provide that instructions implementing Order 39 should be issued by the Minister of Trade in coordination with the Minister of Finance and the Minister of Planning. Therefore, on matters affecting the registration of branches or trade representation offices of foreign companies, the Ministries of Finance and Planning might be regarded as secondary implementing institutions.

Although Kurdish officials now seem amenable to implementing the 1997 Law as amended in 2004 throughout northern Iraq, there remains an important question as to whether company registration is handled through the national or regional government. The Registrar's offices in the Kurdish regions have been answering to the regional Minister of Finance, rather than to the Minister of Trade or the Registrar of Companies in Baghdad. These institutional relationships will need to be clarified if the Law is to be implemented in a consistent and rational way.

Finally, Chambers of Commerce can be considered supporting institutions for company law administration and reform in Iraq. Although the Chambers of Commerce do not implement the Company Law, registration with the Chambers continues to be required under the Law on Commerce No. 30 of 1984.

2.2.3 Suggested Next Steps

Immediate Steps

- The Company Law of 1997 (as amended in 2004) should either be amended or replaced with a new Company Law. As discussed above, the CPA amendments were intended to be provisional; they did not address every shortcoming of the 1997 Law but also in some cases created new legal problems. It is important to resolve outstanding issues for Iraqi business to move forward on a sound basis. The best starting point for either amending or replacing the Company Law is the proposed new company law drafted in the winter and spring of 2004.

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- The Law on Commerce No. 30 of 1984 should be amended to simplify requirements for approval of a company's name. As noted above, although the registration and company name provisions of the Company Law were amended to make them more registrant-friendly, old, more restrictive requirements survived in the un-amended Law on Commerce. These requirements should be liberalized to assure a company registration process that is (a) simple; (b) quick; (c) cheap; and (d) does not require travel to Baghdad or, if possible, to any other distant place. The law also needs clearly to respect the rights of sole proprietors who have not registered as companies. Finally, Article 7 of the Law on Commerce, which mandates ministerial supervision of every business by sector and which has already been repealed by CPA order, should be deleted expressly from the statute by amendment.

Intermediate Steps

- The 1997 Company Law and any future company law should be fully applied throughout the Kurdish regions as soon as possible. There also needs to be a decision on whether it is to be applied there by officers reporting to the Registrar and the Minister of Trade in Baghdad or by some regional structure. Resolution of these questions has been listed as an intermediate step, not because it is not urgent and important, but because it has Constitutional implications, and is therefore probably not capable of immediate resolution.

Long-Term Steps

- Training and capacity building for registrar officials should continue to put in place modern business-friendly registration systems for registering companies. This will be a long-term process, including roles for both Iraqi and foreign trainers and advisors, as demand increases and new offices are opened in various parts of the country with changing needs as the commercial environment gets more sophisticated.

2.3 Agency

An "agent" is a person with a general or a limited scope of authority to act on behalf of a "principal." Agents are highly necessary in commercial life and include corporate officers, sales people, attorneys, many employees and other persons who have been given authority to act for a principal. The most important function of agency law is to set clear rules for the conduct of principals and agents with regard to their dealings with third parties. Best international practices allow principals and third parties to ratify acts of an agent, even if unprecedented and outside the scope of the agent's authority, allow for principals to be bound by an apparent grant of authority to the agent, favor disclosure of the agency to the third party, and allow redress by principals and third parties against agents who cause damage by exceeding the scope of their authority.[17] The adoption of a best practice legal regime in Iraq that sets clear rules for the conduct of principals and agents with regard to their dealings with third parties will be important for expanding commercial activity, investment and trade.

[17] *See* Convention on Agency in the International Sale of Goods, 1983, at http://www.unidroit.org/english/conventions/1983agency/main.htm

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2.3.1 Legal Framework

The basis for Iraqi agency law is provided in the Civil Code of 1951. This agency law is derived from both Islamic law and continental European civil law principles. The basic agency provisions provided in the Civil Code are generally consistent with international practices. Article 927 of the Civil Code states that:

> Agency (Commission/Mandate) is a contract by which a person constitutes another person in his stead to carry out a definite legal disposition.

"Legal disposition" refers to an act affecting rights and obligations, and is a term derived from French law.[18] Article 928 establishes the principle of ratification of a course of dealing: "subsequent authorization is tantamount to antecedent delegation." Other articles require that the principal have the legal competence to delegate, and that an agent exercise an ordinary duty of care if remunerated and the same as his care for his own affairs if not paid. Article 933 allows an agent to exceed his authority "when the circumstances are such that it can be assumed that the principal could not but have approved these disposals" but requires immediate notification to the principal. Other articles require the agent to disclose the agency for the third party to be bound to the principal, allow actions of the agent to be ratified by the principal after the fact even if indisputably outside the scope of authority, and allow redress for damages caused by unauthorized actions of the agent. Agents may claim compensation if terminated at an "inopportune time," which seems to be similar to the "vexatious" termination in the employment contract provisions of the Code.

The agency rules of the Civil Code are common sense and in accordance with international best practices. The same is not true of the Ba'athist era enactments that impose licensing and authorization requirements on agents and attorneys beyond the rules of the Civil Code. These seem to have been motivated by a general distrust of agencies and a desire to control agencies, including a desire to steer lucrative business relationships to favored individuals. In addition, they hinder the freedom of contract, restrict foreign investment, and could enable corruption.

The first such problematic enactment is Article 52 of the Civil Procedure Code of 1969, which provides as follows:

> General and absolute power of attorney does not entitle the general attorney without holding a special authorization the right to confess a right or to waive the same, reconciliation, arbitration, sale, rent, pledge, collection of money, donate funds, put into oath or return or decline the same, request recusal of judges or to file complaints against them, to exercise personal rights, to enter into any kind of for-consideration contracts, or to conduct any other kind of acts for which the law requires a special authorization.

This article is from the part of the Civil Procedure Code titled "Attendance and Absence of Litigants." It appears to require attorneys to receive specific grants of authorization for almost any act in their conduct of litigation. The acts listed, "sale, rent, pledge, collection of money," etc.,

[18] Amin, *The Legal System of Iraq*, p. 211

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seem to encompass more than the average litigation situation, however. One commentator believes this law is generally applicable to all agencies, not just lawyers litigating in behalf of principals.[19] By limiting the "general and absolute power of attorney" to something quite a bit less than absolute power in many situations, some of which are vaguely defined, it creates confusion on the possible scope of representation of attorneys and other agents.

Iraqi and other Arab law makes a distinction between civil and commercial agency, in which the law of commercial agency is more restrictive. This is reflected in the Law of Commercial Agency No. 51 of 2000, which sought to regulate commercial agency, a practice common to the Arab world; almost all Arab countries have commercial agency laws of varying restrictiveness. All of these laws require commercial agents to be nationals of the country, as the Iraqi law did. Some required all foreign businesses to use commercial agents to do business, which the Iraqi law did not.[20] However, because it was difficult to register foreign businesses in Iraq, foreign businesses were often forced to deal through commercial agents, unless they were dealing directly with government departments. A notice issued by the CPA on June 9, 2003 apparently suspended Law No. 51. The notice said:

> The former regime established extensive administrative procedures, and applied these procedures in a manner that extorted and exploited Iraqi business people who did not support the regime.
> The CPA recognizes and supports the law permitting Iraqis to establish direct trading agencies with international trading companies. However, the CPA has suspended the former Iraqi regime's administrative procedures regarding this law. Iraqi business people are now free to negotiate directing trade relationships with international trading companies, without the administrative constraints imposed by the former regime.[21]

Since the notice did not specify which laws or articles it was referring to, or set any effective date, No. 51 was not explicitly repealed or replaced. Following this notice, CPA Order 39 on foreign investment and the changes to the Company law in CPA Order 64 were also issued. These CPA Orders were interpreted by coalition officials to remove both the restriction on non-Iraqis becoming commercial agents and the restrictions on foreigners forming business entities inside Iraq. In February 2004, the Iraqi Ministry of Trade issued regulations implementing Order 64 and stating that Order 39 nullified Law No. 51 of 2000.[22] There was, however, strong bureaucratic resistance

[19] Id., p.227
[20] Egypt: Law No. 120 of 1982, Executive Regulation No. 342 of 1982; Libya: Decision of General People's Committee for Economy and Trade No. 178 of 2001; Lebanon: Decree Law No. 34 of 1967;
Qatar: Commercial Agency Law No. 8 of 2002; Saudi Arabia: Royal Decree No. 11 of 1962; Regulations of Ministry of Commerce, Order 1897 of 1981; Yemen: Law on Commercial Agencies and Branches of Foreign Companies No. 23 of 1997; Kuwait: Articles 24 and 260-298 of Kuwait Commercial Code; and Law No. 36 on Regulation of Commercial Agencies; UAE: Federal Commercial Agency Law No. 18 of 1981, amended by Law No. 14 of 1988; Oman: Royal Decree No. 26 of 1977, amended by Royal Decree No. 73 of 1996; Ministerial Decision No. 11 of 1985; Bahrain: Commercial Agency Law of 1992;
Syria: Legislative Decree 151 of 1952
[21] Full text at http://www.iraqcoalition.org/regulations/PN3.pdf
[22] At http://www.cpa-iraq.org/economy/summary.html

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within the Ministry of Trade. More regulations were issued which revived Law No. 51 and the ministry's legal department rejected the applicability of CPA Order 39 to commercial agency was rejected by the ministry's legal department. In their legal opinion, since "commercial agents" were not "investors," it was permissible to exclude non-Iraqis from commercial agency.

A draft of a new commercial agency law was prepared in March 2005. The draft removed restrictions on non-Iraqis becoming commercial agents and explicitly stated that there is no requirement for anyone to conduct business through a commercial agent. That draft law has not yet been enacted. More efforts to build public and governmental support and assistance to potential sponsors within the Iraq government of a new commercial agency law will be needed to clarify the legal status of commercial agency in Iraq.

Law No. 4 on Registration Agency of 1999 requires attorneys to be specially registered as "registration agents" before they act for others seeking registrations of companies, trade names at the Chamber of Commerce, trademarks and patents. Only attorneys of "absolute competence," or so-called C grade lawyers, the highest grade of between A and C under the Law of Lawyers No. 173 of 1963 are allowed to become registration agents. The law does not explicitly require the use of an attorney, but seems to complement a reported informal practice that compelled persons to use attorneys as agents at the Companies Registry. The amendment to Article 208 in the Company Law in CPA Order 64 explicitly removed any requirement to use an agent to register a company, but the rest of the law remains in force and could be used to compel businesses to use an attorney or agent to register a trade name at the Chamber of Commerce or a trademark. This special registration of agents seems to have little function other than serving as a gatekeeper preventing less politically favored attorneys from assisting in registrations, or is a restraint on trade on what is seen in best international practices as one of the routine functions of an attorney.

2.3.2 Implementing Institutions

As agency law is a variant of contract law, in an ideal situation the parties to the agency will implement it without the need for institutions. As in contract law, the primary implementing institution, the courts, will only be required when a dispute arises. Agency disputes would be heard through the Courts of First Instance.

The Commercial Agency Law and Registration Agency Law require registration in the Companies Registry at the Ministry of Trade. The Companies Registry has been receiving advisory and material assistance to improve its information technology capability and business processes, which has improved the registration of companies, but the effect on the administration of these agency laws has been minimal because of the confused legal situation.

The Iraqi Bar Association registers and regulates lawyers. Lawyers pay an annual fee of 45,000 dinars for registration. The Iraqi Bar Association is also upgrading its capabilities with new, more secure, identification card equipment.

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2.3.3 Suggested Next Steps

Immediate Steps

- The legal confusion surrounding requirements associated with the Commercial Agency Law No. 51 should be resolved by clarifying that these requirements were nullified by CPA order.

- Law of Registration No. 4 of 1999 should be repealed or amended to either remove all licensing requirements for anyone acting as a registration agent, or to state that all lawyers may act as registration agents.

Intermediate Steps

- The draft new commercial agency law should be finalized, based on discussions with stakeholders, and adopted by the Iraqi government.

- Article 52 of the Civil Procedure Code of 1969 should be amended to allow attorneys of the highest grade a wider scope of action when representing clients in litigation and as agents, and to remove the ambiguity in the general law of agency created by Article 52, which requires special authorization for a wide range of acts, even if a general power of attorney has been created.

2.4 Bankruptcy/Insolvency

Properly structured, bankruptcy and insolvency law and institutions provide a fair and transparent means for debts to be resolved when debtors can no longer pay them on schedule. Most importantly, insolvency procedures in accordance with international best practices distribute assets fairly to creditors, giving investors and entrepreneurs greater confidence in lending and borrowing. International best practices in insolvency law also promote confidence by maximizing the value of the debtor's assets, fairly balancing reorganization and liquidation, preserving the debtor's estate to allow the equitable treatment of similarly situated creditors, resolving cases efficiently, fairly and transparently, and by establishing clear rules for the ranking of claims and for cross-border insolvency.[23] In Iraq, the development of modern bankruptcy law and practice will be important to economic development, in particular by increasing confidence of creditors and thus promoting greater lending to entrepreneurs.

2.4.1 Legal Framework

With reforms adopted by the CPA in 2004, Iraq now has a sound legal framework for bankruptcy and insolvency, with three interrelated component laws. The first is the Bankruptcy Code[24]; the second is the portion of the Civil Code of 1951 dealing with insolvency and secured debt, and the

[23] UNCITRAL Legislative Guide on Insolvency Law, 2004, at http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/2004Guide.html
[24] Contained in Articles 566 - 791 of Law No. 149 of 1970, as amended by CPA Order 78 (2004)

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third is the Penal Code section on criminal bankruptcy. This legal structure is more than sufficient for current needs, but some consideration should be given as to whether the Bankruptcy Code should allow for a clearer and easier means of discharge for debtors and whether the bankruptcy related provisions in the Penal Code of 1969 are sufficiently clear and lenient.

Further development of bankruptcy law and institutions in Iraq will depend on the demand for the use of this legal framework and related institutions. Currently, demand for court supervised debt resolution appears to be low. In addition to the more punitive legal framework, which implicitly threatens criminal prosecution in every individual bankruptcy proceeding, there are cultural and social factors that hinder the use of the bankruptcy law in all but the most desperate cases. The threat of punishment and the stigma attached to bankruptcy can be traced back to Islamic law.

In Iraq, bankruptcy judgments and applications for discharge are required to be published in newspapers, which could subject individuals to a lasting stigma. Other factors which militate against the extensive use of bankruptcy proceedings are the fact that many companies, including joint stock companies, are closely held by large families more likely to pursue informal debt resolution means, the continuing traditions of informal and tribal mediation, and the large state-owned sector of the economy.

With regard to the latter, insolvency and liquidation of state-owned enterprises is governed by Chapter 10 of Law No. 22 of 1979 on State Companies. This law requires that the ministry controlling the company form a liquidation committee with Ministry of Finance membership, which will prepare a report and liquidate the company's obligations and assets. There are no provisions for the ranking of claims or preservation of the company's assets for equitable distribution to the creditors. The process is neither specified nor transparent. State-owned companies can also be converted to joint stock companies under Chapter 9 of the law, a possible path to reorganization and privatization of state-owned enterprises.

The 2004 CPA amendments to the Bankruptcy Code and a few attendant provisions in the Civil Code and the Law on Enforcement of Judgments brought insolvency law into line with international best practices. The amendments accomplished several objectives, as follows:

- strengthening protections to secured creditors, who were subordinated to taxes, wages, and other state debt under the old law;
- clarifying the ranking of creditors, from secured to privileged (wages and taxes) to ordinary unsecured creditors;
- raising the threshold for creditors to file involuntary bankruptcy petitions;
- providing for a limited and fair recognition of foreign bankruptcy proceedings;
- removing the harsh civil disabilities that followed an adjudication of bankruptcy under the old law.

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Debtors who are facing insolvency may avail themselves of two means of settling debts with their creditors and obtaining a speedy discharge: a composition, which is a settlement reached after the filing of a bankruptcy petition; or a scheme of arrangement, which may or may not be presented before the commencement of a bankruptcy petition, but will in any event defer a judgment in bankruptcy. Schemes of arrangement are more explicitly reorganization plans, as they are for debtors whose assets are not being liquidated. However, the procedure is almost the same for both compositions and schemes of arrangement. In both circumstances, creditors must vote to approve the settlement in similar procedures. Articles 698 – 721 of the Civil Code of 1951 also provide for "composition," but this seems to imply a settlement contract for individual obligations, as opposed to the collective composition process of bankruptcy.

Debtors are discharged from bankruptcy by the obvious means of paying all of their debts, as part of a composition or scheme of arrangement, by an agreement to abandon their property to the creditors, or after one year, through application to the court and publication of notice of the application in a newspaper. This procedure of application and publication appears to leave some discretion with the court in deciding whether to discharge the debtor. Fraud by the debtor requires a separate discharge procedure through the law.

One potentially significant factor in the Bankruptcy Code deterring bankruptcy petitions is the requirement that both bankruptcy judgments and applications for discharge be published in newspapers. This requirement of publication may serve to deter bankruptcy petitions because of the notoriety and shame attached to insolvency.

The Penal Code of 1969 provides for three basic circumstances for criminal punishment for bankrupts. The first is fraud, which is punishable by not less than two years and not more than seven years imprisonment. The second is gross negligence in the management of expenses, which is punishable with up to two years imprisonment. This provision and the related provision in Article 470 punishing incomplete record keeping with up to one year imprisonment may be a part of the cultural proscription against insolvency described above, but the somewhat vague nature of prohibitions like "personal or private expenses [which] are excessive in relation to his income" may lead to arbitrary criminal prosecutions and deter use of the bankruptcy law.

2.4.2 Implementing Institutions

The primary implementing institution is the Court of First Instance, the basic civil trial court in each governorate of Iraq. There is no separate bankruptcy court system; bankruptcy cases are heard in ordinary civil trial sessions. The mandate of Section 2 of CPA Order 78 that a dedicated cadre of bankruptcy court judges be appointed, at least one in each governorate, has not yet been carried out.

The reason for appointment of specialized bankruptcy judges was to allow for more specialized bankruptcy practice and thus, greater experience among the appointed bankruptcy judges. Judges in Iraq do have knowledge of bankruptcy law and procedures, but the infrequency with which bankruptcy cases are filed and the distribution of the cases among all trial judges has not allowed many judges to gain the experience that leads to more efficient adjudication. Specialized bankruptcy judges, once identified and appointed, will require fairly extensive training in bankruptcy law and practice. The collateral benefit of judicial training in bankruptcy would be to

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raise awareness of the bankruptcy law's benefit to the economy, leading to greater use of bankruptcy law procedures when called for.

The Ministry of Justice licenses bankruptcy trustees pursuant to the amendments of CPA Order 78. The presiding judge, in turn, appoints the trustees to serve in a particular case. Within the Ministry of Justice, the Public Notaries and the Executions Department play a role in the enforcement of bankruptcy judgments and the registration and collection of debts.

Supporting institutions can include the Iraqi Bar Association and other interested legal and business civil society organizations. These should be considered as a means to promote the awareness of bankruptcy law as an available legal remedy.

2.4.3 Suggested Next Steps

Greater awareness and use of bankruptcy law through the use of court supervised debt resolution procedures is clearly preferable to potentially violent self-help remedies, fraud, unfair preferential treatment of creditors and the economic malaise that results from such practices.

Since the Iraqi legal framework for bankruptcy is basically sound, the most important next steps focus on capacity building in the implementing institutions and promoting awareness of bankruptcy as a remedy.

Immediate Steps

- The Higher Juridical Council should be assisted in implementing the mandate of CPA Order 78 to appoint a dedicated cadre of bankruptcy judges, at least one in every governorate, including specialized training in bankruptcy law and procedure for the appointees. Further training for bankruptcy trustees, and other legal practitioners should also be made available.

- The Bankruptcy Code should be amended to streamline the discharge of debtors by providing for more automatic discharge, eliminate the Public Prosecutor's participation in all cases, and eliminate the requirement of newspaper publication of both bankruptcy judgments and applications for discharge.

- Law No. 22 of 1997 on State Companies should be amended to apply some Bankruptcy Law provisions to state-owned enterprises to provide for a transparent procedure for the liquidation, reorganization and sale of state-owned enterprises.

Intermediate Steps

- Training and support for lawyers' associations, business associations and other civil society organizations should be provided to raise awareness of bankruptcy law and procedures and reduce social stigma associated with bankruptcy. As the economy grows and more businesses are organized, some will fail, and bankruptcy as a remedy will become more relevant.

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- The Penal Code should be amended to eliminate criminal prosecution for negligent bankruptcies. The vagueness of Articles 469 and 470 of the Penal Code may be a factor suppressing the filing of bankruptcy petitions by debtors who fear that their personal expenditures may be subject to scrutiny and found to be "excessive," or their record keeping less than satisfactory.

Long-Term Steps

- A bankruptcy court should be established with exclusive jurisdiction over insolvency cases. This step depends upon increased demand for bankruptcy law adjudications. Training should be provided for bankruptcy court personnel and practitioners, and advice and equipment for bankruptcy court asset registries and docket management systems.

2.5 Collateral Lending and Secured Transactions

The purpose of collateral lending and secured transactions laws is to increase availability of financing and decrease its cost by permitting ready access to assets of borrowers as an alternative source of repayment in the event of default in discharging obligations under credit transactions. A good collateral lending and secured transaction law system, by reducing risks to creditors, encourages them to expand their lending activities to a wider range of borrowers and allows them to charge lower rates for credit. In addition, by accommodating the use of different types of financing devices, it also encourages more and different kinds of credit grantors to participate in the market. The essential features of international best practices for collateral lending and secured transactions law include: recognition of non-possessory security interests in all types of movable property; permitting different types of financing devices and credit transactions (including financial leasing); establishment of an efficient, low cost, reliable registry system that is readily accessible to the public; and an integrated set of rules for efficient and cost-effective appropriation by lenders of the value of the collateral in the event of borrower default. The adoption in Iraq of collateral lending and secured transaction law encompassing these principles is critical to the expansion of business and consumer credit and will therefore be very important to economic development in Iraq.

2.5.1 Legal Framework

Current law in Iraq contains very few features of a modern secured financing system. As is the case with many other states that have a legal structure based on the Civil Law tradition, Iraqi law does not recognize the possibility of a generic non-possessory security interest or charge. The core concept of existing secured transactions law is what is inaccurately referred to in the English translation of the Civil Code of 1951 and the Law of Commerce No. 30 of 1984 as a "possessory mortgage" or "mortgage." Technically, what is involved is a "pledge," that is, delivery of possession of items of the debtor's property to the secured creditor or to a third party to be held on behalf of the creditor. These articles of the Civil Code and the Law of Commerce embody the basic principle that the *in rem* interest the mortgagee acquires under a mortgage is an accessory right only and that ownership of the mortgaged property remains with the mortgagor.

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Given the extremely limited scope of the pledge and the fact that movable property taken in pledge is, of necessity, in the possession of the creditor, it is unlikely that successive, competing interests in the property will be created. While this has the beneficial effect of dispensing with the need for explicit priority rules and a registry system, it also means that any excess value in the pledged property over that necessary to secure the obligation owing to the pledgor cannot be offered as collateral to any other credit grantor. It also means that the pledge cannot be used as a financing device for inventory or equipment that businesses require. While current Iraqi law recognizes the transferability of receivables, the applicable rules of the Civil Code are too restrictive to facilitate the general assignments of receivables.

Current Iraqi law precludes any form of self-help enforcement of pledges. It requires an application to the court to permit sale of the pledged property. The procedure for sale of the collateral is complex, and, consequently, time-consuming and costly. The use of "quasi-security transactions" such as forward rate sales contracts and financial and other forms of leasing is frustrated by the lack of a modern legal infrastructure to support these methods of financing the acquisition of equipment and high-value consumer goods. In summary, it is clear that while the conceptual underpinnings of secured financing law are recognized in current Iraqi law (in the context of authentic mortgages), a new law is needed to provide the basis for modern secured transactions.

A proposed draft Law and Regulations of Consensual Charges on Movable property (Secured Transactions/Collateral) has been prepared by the USAID Economic Governance II Project and is now ready for discussions with Iraqi officials. This draft law will provide a legal framework for collateral lending and secured transactions that is consistent with international best practices, and could be an important factor in the rapid expansion of private sources of development capital for small and medium-sized businesses and durable goods financing for consumers. The draft law should be finalized and passed as soon as possible. Proposed new measures as provided for in the draft law should be implemented in coordination with new structures designed to facilitate the development of the private banking sector in Iraq.

In addition, passage of the new law should be done in coordination with a package of changes to the Civil Code, the Company Law and the Commerce Law. These changes are necessary to support the new secured transaction system, since the new Law would introduce concepts and a structure for which there is no precedent in these existing laws. These recommended changes are described below.

Civil Code

- Articles 363 – 374 should be modified to make it clear that an assignment is valid against an account debtor and against a subsequent assignee, even though the account debtor has not been notified of the assignment, permit bulk assignments of existing and future accounts, and specify that priority among successive assignees of the same account(s) is determined as provided in the Law of Consensual Charges on Movable Property.

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- Articles 531 – 534 and 581 – 582 should be modified as they apply to forward rate sales contracts to provide that the remedies available to the seller are those set out in Chapter 8 of the Law of Consensual Charges on Movable Property.

- Article 1163 should be amended to ensure that it does not apply to a chargor in possession of tangible movable property (other than a negotiable instrument) under circumstances contemplated by the Law of Consensual Charges on Movable Property.

- Articles 1321 – 1360 should be repealed.

Company Law

- Article 71 should be amended to provide for publication of a charge on company shares as provided in the Law of Consensual Charges on Movable Property.

Commerce Law

- Articles 186 – 201 should be repealed.

- Articles 206 – 212 should be amended to delete references to "mortgage deeds" since the Law of Consensual Charges on Movable Property provides for charges on negotiable and non-negotiable deposit certificates.

2.5.2 Implementing Institutions

The Ministry of Justice is the proper implementing institution for any new body of collateral lending and secured transactions law that may be legislated. Given ongoing questions concerning the relationship between the central government in Baghdad and regional governments, particularly in northern Iraq, the division of registry and other implementation functions among these government levels is, of course, tied to ongoing constitutional developments.

Ministry of Justice officials from Baghdad, Erbil and Sulamaniyah have recently agreed to hold discussions for the purpose of coordinating on the finalization passage of the new Law. The first meeting will take place during the fall of 2005. The Ministry of Justice will also require comments from officials of the Ministry of Finance as well as the Central Bank of Iraq.

It is expected that the collateral registry offices will be established at the Public Notary's Offices in Baghdad, Erbil, Sulamaniyah and Basra as a first step. The possibility of establishing some registries in commercial banks is under consideration since the banks are the entities that provide the loans to purchase equipment. Current plans envision opening new registries in other locations across the country as soon as possible, while maintaining a central database in Baghdad.

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2.5.3 Suggested Next Steps

Immediate Steps

- The draft Law of Consensual Charges on Movable Property should be finalized and enacted through coordination among officials of the Ministry of Justice (from the central government plus northern Iraq), Ministry of Finance and the Central Bank, with the Ministry of Justice in the lead.

- The Civil Code of 1951 should be harmonized with the Law of Consensual Charges on Movable Property by amending relevant provisions (Articles 363 – 374, 531 – 534, 581 – 582 and 1163) and deleting others (Articles 1321 – 1360).

- The Law of Commerce No. 30 of 1984 should be harmonized with the Law of Consensual Charges on Movable Property by amending Article 71.

- The Company Law No. 21 of 1997 should be harmonized with the Law of Consensual Charges on Movable Property by amending Articles 206 – 212, and Articles 186 – 201 should be repealed.

Intermediate Steps

- Collateral pledge registry offices at the Public Notary's Offices in Baghdad, Erbil, Sulamaniyah and Basra should be established as soon as the Law of Consensual Charges on Movable Property has been passed.

- A modern computerized database should be established in Baghdad for registering nationwide security interests and sales of receivables and privileges.

Long-Term Steps

- Collateral pledge registry offices in other locations across the country should be opened as soon as possible.

2.6 Competition and Consumer Protection

Competition and Consumer Protection law are two related areas of the law that attempt to set rules for fair play in the market. Competition law is directed against unfair business practices such as collusion between businesses to fix prices or limit supply, predatory pricing to drive smaller competitors out of business, and monopolies unfairly dictating terms to suppliers and consumers. Consumer protection law also protects against unfair business practices, but the protected parties are individual consumers of household goods or services rather than other businesses. Normative international practices for consumer protection focus first on consumers' physical health and safety,

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and then on their economic interests.[25] Laws that require pure food and safe mechanical and electrical products have the longest tradition, and are related to, and sometimes in tension with, the World Trade Organization's agreements on Sanitary and Phytosanitary Standards (SPS) and Technical Barriers to Trade (TBT). In addition to safety standards, consumer protection laws also prohibit deceptive advertising and sales tactics. In Iraq, improved competition and consumer protection laws will be very important to economic development by enhancing market efficiency and consumer confidence.

2.6.1 Legal Framework

Because Iraq's pre-war economy was dominated by state-owned enterprises, some of which continue to operate, there is no comprehensive competition law, and little in the way of legal provisions to curb anti-competitive practices. There is nothing in the Civil Code of 1951 or the Law of Commerce No. 30 of 1984, the major commercial laws, which prevent anti-competitive practices. Chapter 6, Section 2 of the Companies Law, as amended by CPA Order 64, requires that a "scientific and technical study" of a proposed merger be submitted to the Registrar of Companies, and that the Registrar approve such merger. Discretion of the Registrar is limited to determining whether the members of the companies properly reviewed the technical studies and approved the merger, and not to whether the merger would lead to impermissible market concentration. The Law on Regulation of Trade No. 20 of 1970 sets a comprehensive state price control regime which is currently not enforced, and prohibits with penalties of imprisonment, in Article 9, any action to raise prices or withhold goods or services from the public "in a manner inconsistent with the economic policy of the state." These laws are vestiges of a command economy rather than a legal basis for competition regulation within a market economy.

Iraq also lacks a comprehensive consumer protection law, although there are prohibitions against fraud and mislabeling of goods, as well as a law for regulating product standards. Article 189 of the Civil Code of 1951 imposes civil damages liability for fraud or "cheating," but the article is minimal and somewhat vague. Articles 466 and 467 of the Penal Code of 1969 impose criminal liability for fraud, false claims with regard to goods and deception in the representation of the quality, components and weights and measures of goods. The penalty is up to two years imprisonment. Law No. 54 of 1979 established the Central Office for Standards and Quality Control (COSQC), which sets standards for food, metrology and industrial products. It requires testing of all imported goods, and allows inspection and sample testing from all industrial and agricultural production facilities. The standards developed by COSQC are based on international standards, as COSQC is a member of the International Standards Organization.

A draft consumer protection law, based on a pre-war Baghdad University Law School draft as amended for a market economy by Iraqi and coalition lawyers, was delivered to the Secretariat of the Council of Ministers in July 2005 but has not yet been enacted. This is a relatively simple common sense law that requires that products be safe and fit for their ordinary use, that food be fit for consumption, that weights and measures be accurate and that known dangers of products be disclosed. It also bans anti-competitive collusion in pricing by merchants. The law establishes a

[25] See UN General Assembly Resolution on Consumer Protection, 1985, at http://www.un.org/documents/ga/res/39/a39r248.htm

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Commission for Consumer Protection with interministerial representation and a Commissioner as executive director. Should this law be passed, the COSQC could continue to be a home for a consumer protection enforcement function, at least with regard to product safety. However, as Iraq develops a WTO accession program, Law No. 54 and COSQC standards will have to be reviewed for compliance with the WTO's agreements on Sanitary and Phytosanitary Standards (SPS) and Technical Barriers to Trade (TBT).

2.6.2 Implementing Institutions

There is no competition or anti-trust regulatory agency in Iraq. Pursuant to a competition law, such an agency could be established either in an existing ministry, such as the Ministries of Justice, Trade, or Planning, as an independent agency under the Secretariat of the Council of Ministers, or as an adjunct to the Prime Minister's office or one of the deputy prime minister's offices. International experiences generally indicate that the greater the figurative distance from political pressures and the businesses being regulated, the more effective the competition agency.

There is also no consumer protection enforcement agency, although as stated above the Central Office for Standards and Quality Control has some consumer product safety and quality testing and enforcement functions. COSQC has been the recipient of aid from donor governments and international standards organizations to upgrade its capabilities. For the time being, it has limited reach and effectiveness in parts of Iraq, but its staff is reportedly motivated and knowledgeable.

2.6.3 Suggested Next Steps

Immediate Steps

- A competition law should be drafted and enacted to establish an independent competition enforcement agency and proscribe predatory pricing, anti-competitive market consolidation and the formation of monopoly cartels. There are several recent examples of modern competition laws enacted in new market (former command) economies in Eastern Europe and the CIS countries that could be reviewed and adapted for the Iraqi environment.

- The draft consumer protection law that has already been delivered to the Secretariat of the Council of Ministers should be finalized and enacted, preferably with an opportunity for Iraqi business and civil society organizations to review and comment on the draft prior to its enactment into law.

Intermediate Steps

- Once the above laws are passed, advisory and material assistance should be provided by international donor agencies in setting up a competition agency, and either building COSQC into a modern consumer protection agency or setting up a new consumer protection agency, as well as continuing assistance for COSQC's standard-setting and quality control inspection directorates.

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- Competition law and consumer protection regulations should be issued under the new laws to provide detailed rules for the regulators to exercise their functions. In particular, competition regulations must provide rules for monitoring and regulating privatization of state-owned enterprises for competition issues, to prevent excessive market consolidation and integration.

- COSQC standards and Law No. 54 of 1979 should be harmonized with WTO Agreements on Sanitary and Phytosanitary Standards and Technical Barriers to Trade as part of a WTO accession strategy.

Long-Term Steps

- Effectiveness of competition and consumer protection agencies should be evaluated and ongoing institutional capacity building should be provided.

- Civil society organizations promoting consumer protection and safe product standards should be supported with training and assistance in public education.

2.7 Foreign Investment

In an increasingly globalized world, many countries have enacted legislation specifically aimed at encouraging foreign direct investment (FDI). Foreign investment can accelerate development by providing capital, technology, expertise and linkages to global markets, as well as generating employment and tax revenue in the host country. Foreign investment laws can be particularly important to establish foreign investor confidence in countries undergoing transition from a command to a market economy. Under international best practices, foreign investment laws should guarantee equal treatment of foreign and local investors, protect against nationalization of investments, allow free repatriation of capital and profits, and provide for international arbitration of investment disputes. In some countries, foreign investment laws offer tax breaks and other fiscal incentives to attract foreign investors. Foreign investment laws also frequently establish an investment promotion agency to promote and facilitate foreign investment in the country. Reform of the legal structures for foreign investment in Iraq will be a critical step in attracting foreign investment and very important to developing the Iraqi economy.

2.7.1 Legal Framework

During the era of Ba'athist rule, Iraq's legal structure placed very heavy restrictions on FDI, violating every element of international best practices in this area of law. Only Iraqi citizens could form a company or act as a commercial agent for foreign companies unwilling to establish an office in Iraq. Branch offices of foreign companies could be opened, but with strict bureaucratic import, export and foreign exchange controls. Furthermore, the arbitrary and corrupt nature of the Ba'athist regime combined with the stringent secret police controls on foreigners generally contributed to an extremely inhospitable environment for foreign investment.

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The only avenue for significant foreign participation in the Iraqi economy, other than arms sales and the oil sector, was participation in major state development projects under the Law of Execution of Major Development Projects No. 60 of 1985. This law and its implementing regulation allowed foreign contractors to bid for major state development projects, which were exempted from many customs controls, labor laws, and taxes. Every project required approval of the supervising ministry, the Council of Ministers, and the President.

In the later years of the Ba'athist regime, four laws were passed in what appears to have been a desperate attempt to revive investment in an economy severely constrained by war, sanctions and oppression. While none of these laws were foreign investment laws *per se*, they did establish frameworks for encouraging certain types of investment. Although these various Ba'athist laws have been nullified or are, at most, of doubtful force in relation to foreign investment at present, it is possible that some of their provisions could be revived or adapted to new legislation in the future.

The Law of Industrial Investment No. 20 of 1998 was administered by the General Directorate for Industrial Development, an independent authority under the Ministry of Industry. This law required licensing of industrial investment projects, which were limited to Iraqi natural or juridical persons, and provided substantial tax exemptions for those projects. The tax relief under Law No. 20 of 1998 was expanded by Revolutionary Command Council Resolution No. 106 of 2000, which completely exempted machinery production from income taxes for ten years, and other natural resource production for five years, with a 50% reduction for a further five. The cumulative effect of these laws would have exempted much industrial production from any taxes or fees.

The Free Zones Law, No. 3 of 1998 did not specify any Iraqi or Arab nationality requirements for potential free zone investors. Three free zones, one near Basra, one near Mosul and one in Al-Qaim (in the western Al-Anbar governorate), were established. The free zones were administered by the Free Zones Authority within the Ministry of Finance, which set a schedule of rates for rent, electricity and other services. Free zone investment projects were approved as either commercial, industrial, or services projects, with complete expatriation of profits and goods possible under the terms of the law.

The most recent of these laws, the Law on Arab Investments No. 62 of 2002, is the closest law Iraq had to a foreign investment law under the Ba'athist regime. It provided substantial tax incentives for investment, guaranteed against nationalization and expropriation, and allowed repatriation of profits and capital and free import and exports of goods. The law, as its title implies, was limited to Arab investors and did not extend to non-Arab foreigners wishing to invest in Iraq.

A new legal structure to encourage foreign investment in Iraq is now being constructed. The first positive change, CPA Order 39 on foreign investment, removed most of the most odious restrictions on foreign investment, including the right to do business without an Iraqi agent. Furthermore, foreign investors are now able to establish Iraqi companies under the amendments to Company Law contained in CPA Order 64 and the appurtenant Ministry of Trade regulation No. 149 of 2004.

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Although these changes to liberalize the treatment of foreign investors are very important, they are incomplete. The CPA intentionally left significant restrictions in place, largely out of deference to Iraqi public fears of foreign economic domination of post-war Iraq. The primary example, Section 8 of Order 39, prohibits the purchase of all forms of real property by a "foreign investor or a business entity with any level of foreign investor participation" but does allow foreign entities to enter into long-term leases for an initial renewable term of up to 40 years. This clause was intended to restrict direct foreign investment in real property, but has now been interpreted by Iraqi authorities to prohibit even indirect foreign investment, such as foreign purchase of shares in Iraqi companies that own real property. Should this interpretation prevail, it would effectively bar foreign investment in most substantial industrial and agricultural enterprises, and could significantly constrain economic development in Iraq. It therefore represents the most urgent issue to be addressed in improving foreign investment law in Iraq. Additionally, since CPA Order 39 explicitly repealed "all existing foreign investment law" it eliminated incentives offered to encourage outside investment under pre-war legislation, such as the Law on Arab Investments.

Iraqi government efforts to revise and improve foreign investment law are continuing. The Ministry of Trade recently drafted regulations, which state that a foreign investment regulation manual will be forthcoming soon. However, all such measures relying on Order 39 are by definition provisional. The establishment of a legal structure genuinely attractive to foreign investors will be best served by enacting a new law in the near future to clarify definitively the rules applying to foreign investment. The current period represents a critical opportunity to finalize and pass a law that incorporates international best practices, tailored to Iraqi circumstances, and is capable of supporting a regionally and internationally competitive investment promotion strategy as political and economic conditions improve in Iraq.

A draft investment promotion law has been written and is presently being vetted by the Iraqi government. The draft investment law provides for the establishment of the Iraq Investment Promotion Agency (IIPA) as an independent state corporation. It also provides standard protections against discriminatory treatment of foreign investors and expropriation of property, and guaranteed repatriation of proceeds. Under the draft law, the Investment Committee of the IIPA can approve investment projects for tax and other incentives as permitted by law. These include exemptions from taxes and fees for capital assets and spare parts brought into Iraq by approved projects, and guarantees repatriation of capital, profits and salaries. These incentives are very similar to those in the Law on Arab Investment, but do not include the income tax exemptions of up to ten years stated explicitly in the pre-war law. In addition, the draft law states that "a non-Iraqi investor may invest in Iraq through ownership or partnership or shareholding," but does not explicitly state that this extends to direct or indirect investments in real property.

Finally, the lack of Iraq's adherence to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards and the lack of associated Iraqi law enabling the recognition of foreign arbitration awards continue to be additional discouragement to foreign investment in Iraq. However, the draft Investment Law does provide that parties to an investment contract may stipulate to an agency of their choice for mediation or arbitration. This language should be enacted into law and the Code of Civil Procedure amended accordingly to provide for

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judicial enforcement of international arbitration awards. In addition, Iraq's attractiveness to investors will be enhanced with adoption of the New York Convention.

2.7.2 Implementing Institutions

Serious deliberations have just begun to emerge on which institutions will implement foreign investment programs for Iraq. The draft Investment Promotion Law, if passed in its present form, would establish the Iraq Investment Promotion Agency under a board of directors chaired by the Minister of Planning.

According to a document presented to the Brussels Conference in June, the Ministry of Planning and Development Cooperation (MOPDC) is "the lead government agency for private sector development and investment planning and promotion." MOPDC has recently promulgated a Development Plan for Iraq that included the establishment of an investment promotion agency. MOPDC was also the lead agency for investment promotion activities under the Law of Arab Investment No. 62 of 2002.

However, several other ministries had significant overlapping legal roles in implementing and supervising investment policy. For example, according to the Law of Industrial Investment No. 20 of 1998, licenses for the industrial investment had to be sought though the Ministry of Industry. The Free Zones were administered through the Ministry of Finance, while the Ministry of Trade issued the recent preliminary foreign investment regulation. Given the inter-ministerial nature of FDI issues, it would be sensible to receive inputs from all of these ministries during the consideration and finalization of the draft Investment Promotion Law.

Supporting institutions for investment law reform that could be involved in finalizing the draft Investment Promotion Law include the Iraqi Federation of Chambers of Commerce, the Iraqi American Chamber of Commerce, which has sponsored several investment conferences, the Iraqi Institute for Economic Reform, an Iraqi non-governmental organization promoting market reforms, and the USAID funded Izdihar program, which is drafting instruments for WTO accession and for an investment promotion agency.

2.7.3 Suggested Next Steps

Immediate Steps

- The draft Investment Promotion Law should be finalized and enacted. The Ministry of Planning and Economic Development Cooperation is the lead ministry, and inputs should be obtained from other key ministries, including the Ministries of Industry, Trade and Finance, as well as key private sector stakeholders such as business associations and chambers of commerce and NGOs.

- The Code of Civil Procedure should be amended to provide for judicial enforcement of international arbitration awards.

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Intermediate Steps

- The Iraqi Investment Promotion Authority should be established and its capacity built to promote and facilitate FDI in Iraq.
- Regulations to implement the Investment Promotion Law, including standards and schedules for income tax exemptions and other incentives, should be passed.
- Iraq should accede to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

Long-Term Steps

- Advisory and material support should be provided to the Iraq Investment Promotion Agency in marketing Iraq to international investors, and in establishing a "one-stop-shop" for investment procedures.
- Public discussion among business associations and other civil society organizations of the issue of foreign investment and its value to Iraq should be promoted.
- Opportunities for bilateral and multilateral investment agreements should be explored and pursued as appropriate, including closer engagement of Iraq with the World Bank Group's Multilateral Investment Guarantee Agency (MIGA).
- Existing free zones should be revived and new ones established in appropriate locations and with a revised new set of free zone legislation.

2.8 International Trade

International trade law defines the rules and standards to be applied to commercial relations among parties of different nationalities within the global trading system. During the last 50 years, several international organizations have played a pivotal role in establishing the global trade regime, the most noteworthy of which include the World Trade Organization (WTO), the UN Conference on Trade and Development (UNCTAD), and the World Customs Organization (WCO). These organizations and others define the common standards for traded goods and services; common procedures for transactions; simplicity and transparency in border controls and tariff administration. Under international best practices, trade law facilitates trade in goods and services and maximizes the efficient and productive use of a country's resources, thereby increasing employment and incomes. Reform of Iraq's trade laws will be important to the country's economic development by expediting the country's full participation in the global trading system.

2.8.1 Legal Framework

Iraq has joined relatively few international trade agreements, ranking 167 out of 192 countries in accession to important conventions, according to the International Trade Centre of the WTO and

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UNCTAD. [26] The low ranking is largely a result of Iraq's 30-year isolation from the international economic system, and a complex and cumbersome trade regime. However, the country currently has observer status at the WTO and it is in the process of applying for full membership. Iraq's immediate challenge is to purge its legal system of trade restrictive legislation enacted during the Ba'ath period and replace it with a system of laws that facilitate trade and can ultimately be deemed WTO compliant. The priority areas in Iraq's trade regime that need to be addressed include: import/export; customs; transportation of goods; and trade and payment documentation standards.

Overview of Iraqi Trade Law: Import/Export Licensing

A particularly draconian element of Iraq's trade regime is the Law of Regulation of Trade No. 20 of 1970, which require that a license be obtained from the Ministry of Trade to import or export goods. The Trade Liberalization Policy of CPA (Orders 12 and 54) removed tariffs on goods, but did not explicitly address import and export licensing, except for removing a few export restrictions on listed goods. Thus, the licensing requirement for all imports and exports remains technically in force. This law is a relic of the Ba'ath regime that serves no valid purpose and is historically associated with corruption, most famously during the Oil for Food program.[27] It should be repealed.

Overview of Iraqi Trade Law: Customs Rules and Procedures

Iraq's customs structure, authorities and activities are based on the Customs Law No. 23 of 1984 and subsequent amendments. The customs legal base was drawn from World Customs Organization guidelines and conventions current in 1984. It is still a sound legal base, but it is now outdated and lacks the detail, scope and transparency that a modern customs authority needs to play its role in good, sound and sustainable economic, political and social governance. However, it can be brought to international standards by a series of amendments. Amending the legal base and subsequent operation procedures must be viewed as a priority within the broader framework of the current customs reform program.

> A *General Commission of Customs Modernization Plan* has been developed under USAID's Economic Governance II Project, including specific proposals for a series of amendments to bring Iraqi law into agreement with the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention) as well as simplifying legal processes, and providing within the Customs Law a legal basis for compliance with the WCO's Harmonized Description and Commodity Coding System (HS) and the WTO's Customs Valuation System as contained in the GATT agreement (Uruguay Round) of 1994.[28]

[26] From International Trade Centre at http://www.legacarta.net/country_details.php?entity_id=186
[27] Independent Inquiry Committee, *The Management of the Iraqi Oil-for-Food Program*, Vol. II, pp. 35-39, 2005, at http://www.iic-offp.org/
[28] For more, see *General Commission of Customs Modernization Plan*, USAID Econ. Gov II Project document, BearingPoint Iraq, June 2005, at https://iraq.bearingpoint.com/AD/FTCR/CR.aspx

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Overview of Iraqi Trade Law: Transport of Goods

The Law of Transportation No. 80 of 1983 is the principal Iraqi law on transportation of goods. It is divided into chapters corresponding to modes of transportation: land carriage for passengers and goods, and air, maritime, rail and fluvial transportation. Directive No. 1 imposes stringent documentation and contracting requirements for land transportation. This is in accordance with Article 2 of the Law of Transportation, which expressly states that "the socialist sector leads and guides the carriage activity." Article 2 is the apparent legal basis for the exclusive hold that the Ministry of Transportation has on customs clearing warehouses, port services and other transportation activities, including airlines.

In general, the Law of Transportation is incomplete and outdated. There are no formal legal definitions for payments through documentary credits (letters of credit), e-payments, and the shipment of goods with electronic bills of lading. Although the Law appears to conform to international conventions, it is incomplete and weakened by the implementing regulation, Ministry of Transportation Directive No. 1 of 1984. The Law of Transportation as a whole is an incomplete sampler from several international conventions, and mixes provisions regulating the carriage of goods with the carriage of passengers.[29] These terms and legal relationships are often more clearly defined in the international conventions than they are in the law.[30]

Another obstruction to trade is the requirement for standard transportation waybills and other documentation from the Ministry of Transportation pursuant to Ministerial Directive No. 1 of 1984 of the Law of Transportation No. 80 of 1983. This regulation and others give the Ministry of Transportation a monopoly on customs clearing warehouses and requires the presence of a "representative of every ministry" at the customs clearing warehouse. The presence of several ministerial inspectors at customs warehouses results in a cumbersome customs clearance process. Directive No. 1 also requires all non-Iraqi trucking companies to enter into contracts with the Iraq state-owned transportation company prior to operating in the country; however, it is uncertain as to whether this rule is currently being enforced.

The Law of Ports No. 21 of 1995 provides for the management of Iraqi ports by the Iraqi Ports Establishment of the Ministry of Transportation. As Iraq has not adhered to many of the international conventions in maritime safety and port control advanced by the International Maritime Organization over the last 30 years, these regulations are being examined by coalition military advisors to the Iraqi Coastal Defense force, with the aim of revising or replacing them and promulgating modern port operation and maritime service codes similar to the Model Maritime

[29] For example, the section on land transportation is drawn from the 1956 Convention on the Contract for the International Carriage of Goods by Road (known as the CMR convention), and the section on maritime carriage is drawn from the UN Convention on Carriage of Goods by Sea (Hamburg Rules) of 1978, but neither section of the Law of Transportation is as complete as the international conventions are. Many definitions of terms and the respective responsibilities and liabilities of carriers and shippers are omitted.

[30] In contrast, the section on air transportation expressly adopts the Warsaw Convention of 1929, with amendments ratified by Iraqi laws up to 1973, "or by any other convention which may substitute it and be ratified by law.[30]" This unfortunately means that the Montreal Convention of 1999, which has largely replaced the Warsaw Convention as the international standard regulating air carriage liability, is not in force in Iraq, as it has not been signed as a treaty nor ratified by law.

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Service Code written by U.S. Coast Guard lawyers.[31] The respective lines of authority and roles of the Iraqi Ports Establishment and the Iraqi Coastal Defense Force will have to be determined in the process of updating the port operations law.

Overview of Iraqi Trade Law: Trade and Payment Documentation Standards

The Law of Commerce No. 30 of 1984 defines standards for documentary credits (letters of credit) and negotiable instruments. The Law of Commerce also contains definitions of trade terms such as CIF (cost, insurance, freight) and FOB (free on board). The terms which the Law of Commerce contains (FOB, FAS, CIF, C&F, Sales Ex Works) are defined in accordance with international standards such as the International Chamber of Commerce's INCOTERMS, but some terms are omitted. Definitions of negotiable instruments and letters of credit are inadequate in comparison to those in the US Uniform Commercial Code (UCC) and other international documents such as the International Chamber of Commerce's Uniform Customs and Practice for Documentary Credits (UCP 500). The Commerce Law also does not contain provisions for electronic banking and electronic signatures.

2.8.2 Implementing Institutions

Under Iraq's import/export regime, every importer must deal with at least three government bodies: the General Commission on Customs of the Ministry of Finance; the Ministry of Trade; and the Ministry of Transportation. Unfortunately, the Iraqi government institutions responsible for implementing international trade laws can be generally characterized as ineffective and corruption-prone. Bureaucratic control is given priority over efficiency and transparency, and there is ongoing confusion over the regulatory roles of different ministries. These problems impede effective trade policy implementation and offer multiple opportunities for rent seeking.

The Ministry of Trade is attempting to transform itself from a "command and control" agency to a trade facilitation agency. These reforms have apparently not influenced the attitudes of many mid-level and lower bureaucrats who still seek to control all aspects of commerce. Repealing the Law of Regulation of Trade of 1970 and substantially amending the Law of Commerce No. 30 of 1984 will be prerequisites to reforming the Ministry of Trade.

The General Commission on Customs of the Ministry of Finance is the primary tariff and import control agency. It is responsible for setting policy and collecting the Reconstruction Levy and any future tariffs. However, it has no enforcement authority. The Border Enforcement Force of the Ministry of Interior is responsible for enforcement.

The Central Office for Standards and Quality Control (COSQC) sets standards for food, metrology and industrial products. The Ministry of Agriculture also maintains an agricultural inspection presence at the borders. The Ministry of Health is establishing a Food Safety Agency that may impose additional controls. These agencies and their respective roles must all be evaluated and brought into line with requirements of Iraq's WTO accession strategy in light of the Sanitary and Phytosanitary Standards (SPS) and Technical Barriers to Trade (TBT) agreements. Customs should

[31] At http://www.uscg.mil/hq/g-ci/affairs/MMSCode/English/

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be given sole responsibility to enforce standards at the borders, while COSQC and the Ministries of Health and Agriculture can continue to set standards and police internal markets.

The Ministry of Transportation requires a transformation from a manager of state-owned transportation companies to a modern regulatory and enforcement agency. In the maritime area, the lines of enforcement authority for the Ministry's Iraqi Ports Establishment and the new Iraqi Coastal Defense Force need to be established.

2.8.3 Suggested Next Steps

Immediate Steps

- The Law of Regulation of Trade No. 20 of 1970 should be repealed, as should all associated regulations and practices requiring import and export licensing from the Ministry of Trade. This would remove major impediments to trade and opportunities for rent seeking.

- The Customs Law of 1984 should be amended as provided in the *General Commission of Customs Modernization Plan*, including legislative revisions to harmonize it with the WTO Kyoto Convention and GATT customs valuation standards.

- The Law of Transportation No. 80 of 1983 and its implementing regulations should be amended to eliminate the state supremacy provisions in both Article 2 and the ministerial regulations, and to provide a statutory basis for payments through documentary credits (letters of credit), electronic payments, and the shipment of goods with electronic bills of lading.

- Ministerial Directive No. 1 of 1984 under the Law of Transportation should be amended to remove references to documentation requirements for standard transportation waybills, requirements for representatives of multiple ministries at customs clearance warehouses, and mandatory requirements for non-Iraqi trucking companies to enter into contracts with the state-owned transportation company.

- The Law of Commerce No. 30 of 1984 should be amended to update definitions of negotiable instruments and letters of credit and provide provisions for electronic payments and electronic signatures in accordance with international practice.

Intermediate Steps

- Iraq should continue to work with the WTO to meet requirements for full membership on a reasonable timetable. Agricultural policies and product standards should be revised to comply with the WTO/SPS and TBT agreements.

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- An institutional reform program of training and organizational restructuring should be launched within the Ministry of Trade to transform it from a trade control to a trade promotion agency.

- Responsibilities for controlling goods at border crossings control should be centralized within Customs in coordination with relevant authorities involved with product standards and market regulation, border import inspection functions for agricultural and industrial products, and border crossing security.

- Modern port and maritime safety laws should be enacted that harmonize Iraq's port and maritime regulations with IMO and other international standards. As part of this effort, clear lines of enforcement authority need to be established between the Iraqi Ports Establishment and the new Iraqi Coastal Defense Force.

- Iraq should accede to the Montreal Convention of 1999 and make necessary amendments to provisions of the Law of Transportation regarding international rules for air carriage liability.

- Training and assistance should be provided to upgrade the capacity of customs personnel and modern customs information technology systems.

Long-Term Steps

- The Ministry of Transportation should undergo a transformation from a manager of state-owned transportation companies to a modern regulatory and enforcement agency.

- An ongoing effort should continue to identify and address gaps in Iraq's trade legislation, including customs regulations, product and agricultural standards, and transportation.

2.9 Intellectual Property

Intellectual property (IP) laws protect the ownership of such intangibles as trademarks, copyrights, patents and industrial designs. These laws have two main purposes: to protect intellectual property owners' investments in research, creativity, quality and goodwill, and to protect buyers' interests in the integrity and quality of sold goods. The existence of a sound IP legal framework is an important consideration for foreign investors and is also required of all WTO members under the Trade Related Intellectual Property Agreement. Under international best practices, intellectual property rights are protected against infringement by both civil and criminal penalties. Although Iraq has a reasonably sound statutory IP framework, several important amendments are required in order for the country to meet global standards. IP reform will be important to the development of Iraqi entrepreneurial activity, and to the attraction of foreign investment and integration into the global economy.

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2.9.1 Legal Framework

Prior to the collapse of the Ba'athist regime, Iraq had a basic but functioning trademark, copyright and patent registration system. Although it was a member of the World Intellectual Property Organization and the Paris Convention on the Protection of Industrial Property, its IP laws were unevenly enforced. For instance, "Pepsi" was manufactured in Iraq by partially state-owned bottlers using bootleg syrup and recycled Pepsi bottles, and they did not pay royalties to the Pepsi Corporation. Intellectual property enforcement was done privately through the courts, and usually involved trademark disputes between businesses within the Arab world.

Iraq now has a good statutory framework for intellectual property. Article 70 of the Civil Code of 1951 states that the "intangible property" rights of "authors, inventors and artists" and trademarks are protected. Three CPA enactments in 2004 updated the legal framework for intellectual property law in Iraq to make it compliant with international norms. These laws cover all aspects of trademark, copyright, patent and design issues, including plant varieties and integrated circuits, and bring Iraq's laws in line with international conventions, such as the Berne and Nice conventions, to which Iraq has not yet formally acceded. The principal Iraqi laws are discussed below.

Trademark Law

CPA Order 80 amended Law No. 21 of 1957 on Trademarks and Descriptions and renamed it the "Trademark and Geographical Descriptions Law." The law is comprehensive in its treatment of trademark and service mark issues, as well as appellations of geographical origin. It makes reference to and adopts the Nice Convention on classification of goods and services, even though Iraq is not a signatory to the Nice Convention, and broadens the protection for appellations of geographic origin. The coverage of trademark issues is consistent with international best practices.

One potential problem is that provisions of the new laws imposing severe mandatory penalties for trademark violations may actually hinder the enforcement of laws.[32] Overly harsh penalties that remove judicial discretion often create a reluctance to enforce the law at all.[33] Penalties for a first violation of unlawful use of a trademark, counterfeiting or sale of counterfeit goods are a mandatory *minimum* penalty of one year imprisonment *and* a fine of not less than 50,000,000 dinars (about $36,000). For a second offense, the law imposes a mandatory term of imprisonment of not less than five years and a fine of not less than 100,000,000 dinars. These penalties do not seem to be deterring the sale of counterfeit goods at present, but could be used in an arbitrary and capricious way to punish less favored groups or individuals.

In contrast to the penalty provisions of CPA Order 80, Article 476 of the Iraq Penal Code of 1969 provides for a fine and confiscation of counterfeit goods for violation of "another's right of corporate ownership which is protected by law or by international agreement to which Iraq is a

[32] For example, the many child and teenage vendors of counterfeit watches and bootleg DVDs would be subject to these penalties.
[33] *See* U.S. Sentencing Commission, *Report to Congress: Cocaine and Sentencing Policy*, 1995, p.114; *Report to Congress: Cocaine and Sentencing Policy*, 2002; *Report to Congress: Mandatory Minimum Sentences*, 1991, at http://www.ussc.gov/legist.htm

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party." For example, criminal violations of trademark or copyright law in the United States or the United Kingdom do not impose mandatory minimum terms of imprisonment by statute for first offense, small quantity counterfeiting.

Patent Law

CPA Order 81 amended the Patent and Industrial Designs Laws and Regulations, Law No. 65 of 1970 and renamed it the Patents, Industrial Design, Undisclosed Information, Integrated Circuits and Plant Variety Law. As suggested by its title, the new law provides broad protection to all types of scientific, technical and design-related intellectual property. There are three registries created by the law: a patent registry and an industrial design registry, both at the Ministry of Industry, and a plant variety registry at the Ministry of Agriculture. The establishment of the patent registry under the Ministry of Industry has not been implemented. The patent registry remains a part of the Central Office for Standards and Quality Control (COSQC), an agency of the Ministry of Planning and Development Cooperation.

Copyright Law

CPA Order 83 amended Law of Copyright No. 3 of 1971, adding major protections to recorded music and film works. This had been the weakest area of pre-war Iraqi law, as Iraq had never adhered to or adopted all the protections of the Berne Convention on copyrighted works in its own law. This law also has somewhat harsh penalties, although there is no minimum mandatory term of imprisonment for first offenders, only a fine of not less than 5,000,000 dinars (about $3600). Second offenses carry a minimum mandatory term of imprisonment of five years and a fine of not less than 100,000,000 dinars (about $77,000). These penalties are too severe to deal with violators such as street level dealers in bootleg DVDs, so in such contexts, they are not likely be enforced at all.

As previously noted, Iraq is a signatory to the Paris Convention and a member of the World Intellectual Property Organization, but is not a member of the important Berne Convention on copyright laws, the Nice Convention on the classification of goods and services, or other intellectual property conventions.

2.9.2 Implementing Institutions

There are four registries within four Iraqi ministries with oversight responsibility for IP issues. The trademark registry has very recently moved from the Iraqi Federation of Industries to the Ministry of Industry. The patent and industrial design registry remains at the Central Office for Standards and Quality Control of the Ministry of Planning and Development Cooperation, despite the provision in CPA Order 81 designating the Ministry of Industry as the home of the patent registry. According to CPA Order 81, the plant design registry is based in the Ministry of Agriculture, but it is unknown whether this registry has been established. The copyright registry is housed at the Ministry of Culture.

The Courts are another key implementing institution. Counterfeiting of trademarked goods and copyrighted music, videos and software is widespread in Iraq. With Iraqi law enforcement officials

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occupied with other matters, the state's inclination and ability to investigate and interdict sales of illegally copied copyrighted works and counterfeit products is limited. This means that trademark, copyright and patent holders must enforce their own interests by bringing civil actions and criminal complaints in the courts.

Most intellectual property litigation in Iraq is in the trademark field. One phenomenon accounting for some trademark cases are Iraqi, Syrian and other "trademark squatters" who file registration applications for already established trademarks, including world famous marks whose registrations have lapsed over the years of sanctions, and then attempt to collect a monetary settlement. Trademark squatters can do this more readily because law and practice in Iraq make the formal registration of a trademark or service mark more important than in other countries, where use and publicity of a trademark or service mark is enough to establish it as a well-known mark without the need for registration. Courts in Iraq will not ignore a well-known mark if the mark holder defends it; they will simply require expert testimony to establish the fact that it is well known. Iraqi trademark practice relies heavily on expert witnesses in the field, often lawyers, who will testify before the judge on how a particular mark is known and established.

2.9.3 Suggested Next Steps

Immediate Steps

- The Trademark and Copyright laws should be amended to revise penalty provisions downward and restore judicial discretion and bring them to a realistic, enforceable level linked to the value of the counterfeit goods in question.

- The institutional capacity of the trademark, copyright and patent registries should be enhanced through training and improved business processes and information technology, integrated with an overall strategy for improved IP enforcement activities.

Intermediate Steps

- A dedicated intellectual property enforcement unit should be organized within the Ministry of the Interior, or as an adjunct to the Ministry of Trade or Industry. Members of the unit should receive specialized training in enforcement techniques and information technology assistance.

- Iraq should accede to the main international IP conventions that it has not yet joined, in particular the Berne Convention on Copyright, and the Nice Convention on the Classification of Goods and Services. Technical assistance should be provided as necessary to expedite accession.

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Long-Term Steps

- Future development of intellectual property law in Iraq should focus on support for improved enforcement; modernized trademark, copyright and patent registries; and generating greater public awareness of the value of safeguarding intellectual property.

- Support should be provided to civil society organizations of artists, writers, scientists, engineers and others with a stake in intellectual property protection, to assist those organizations in developing public information campaigns that describe the value of intellectual property and the societal and individual costs resulting from the theft of intellectual property.

2.10 Labor and Employment

Labor and employment law regulates the relationship between the employer and employee in a number of areas: permissible contractual relationships, wages and hours, workplace safety, union organizing, and employee bargaining rights. Under best international practices, labor law balances protection of the rights of workers, including the right to organize, with the rights of employers in hiring, managing and firing workers. Reform of labor laws to achieve the proper balance in Iraq will be important to enabling the private sector to generate investment, employment and economic growth within a socially just and stable society.

2.10.1 Legal Framework

The legal framework for Iraq's labor and employment law is contained within three laws: the Civil Code of 1951; the Labor Law No. 71 of 1987 and the General Federation of Trade Unions (GFTU) Law No. 52 of 1987.

Civil Code of 1951

The Civil Code of 1951 delineates some rights of workers and employers in employment contracts, with the exception of agricultural workers and domestic workers, whose employment conditions are said to be subject to "custom and usage" and "social environment." The Civil Code is generally compliant with international best practices, but is of limited scope.

The Civil Code provisions on labor contracts, in Articles 900 – 926, are mostly simple prescriptions of mutually owed duties of loyalty and performance for employers and employees. These provisions are unobjectionable and in accordance with international best practices, with the exception of the "custom and usage" provisions exempting agricultural and domestic workers from the scope of the law. Employees must perform the work assigned, safeguard industrial secrets, and preserve the property of the employer. Employers must pay wages, provide safe and hygienic conditions and safe equipment. Both employers and employees must observe standards of "decency and morality" and adhere to the terms and conditions of their employment contract obligations.

Damages are available for breach of a fixed term employment contract by either the employer or employee. Article 918 of the Civil Code provides for damages "for the harm … suffered" in a

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"vexatious" termination by either party. "Vexatious" is not defined, but appears to mean a sudden and unjustified termination. Damages for a vexatious termination include wages for the remaining terms of the contract, costs of rehiring another worker, and possibly "moral" damages, although this is only implied in "harm suffered." The statute of limitations on employment actions under the Civil Code is one year.

Labor Law No. 71 of 1987

The Labor Law No. 71 of 1987 ("the Labor Law") is only partially compliant with international best practices and should be amended, especially regarding specific rules on hours of work, days of leave, termination and working conditions. The most important deficiency is Article 15, which makes the state the exclusive employment agency for private sector employers. Under this rule, employers must refer vacancies to state employment offices and hire the candidates referred to them by the employment offices, unless the employment office is unable to refer a candidate within 15 days. This article violates international conventions and best practices on the right of free negotiation between employer and employee.

The Labor Law regulates work conditions in the private and mixed sectors in a more detailed way than the Civil Code. In many ways it is too detailed. For example, Article 69 requires that all of an employee's annual leave must be taken at one time, and that no remunerative work be done during annual leave. Article 127 allows discharge of an employee only under certain extreme circumstances, including when the employee "on more than one occasion has been at the workplace in a state of obvious drunkenness."

Pursuant to Article 46 of the Labor Law, a panel of members from the Ministry of Labor and Social Affairs (MOLSA), the Iraqi Federation of Chambers of Commerce, and the GFTU establishes minimum wages.

The wage and hour provisions within the Labor Law are partially in accordance with best international practices and the Convention on Hours of Work (1919). Overtime at time-and-a-half is paid after eight hours work, double-time on holidays, and there is a requirement for one day of rest per week. Some adjustments would be beneficial to allow more than one hour's overtime per day for industrial shift work, and clarify the rules on the permissible number of hours of work per week.

CPA Order 89 amended the Labor Law only to the extent of adding some protections for children in the labor market. It set the minimum age for work at fifteen, set hours and working conditions for workers under eighteen, and adopted much of the language of the Worst Forms of Child Labor Convention (1999).

Law No. 52 of 1987

Law No. 52 of 1987 established the General Federation of Trade Unions as the leading union in Iraq and the sole authorized representative of workers. It proclaims its adherence to the "principles of the revolution of July 17," (the Ba'athist coup of 1968).

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The law imposed fees and a one percent charge on salary to finance the GFTU, which accumulated substantial assets within Iraq. The law emphasizes collaboration among the union, the state and the Ba'ath party. It also removed the right of government workers to organize. Since Law No. 52 only authorized the GFTU, other union organizing could be shut down as illegal if there were a change in government policy. This law and the failure to amend it during the CPA have been extensively criticized in the international news media.

2.10.2 Implementing Institutions

The Ministry of Labor and Social Affairs (MOLSA) has authority over vocational training, occupational safety and health enforcement, and the administration of pensions and social security. A thorough restructuring of MOLSA during the CPA administration transferred prison administration from MOLSA to the Ministry of Justice and established Employment Centers that provide job training and placement for unemployed persons.

MOLSA also has a role in workplace relations, through the Industrial Relations and Social Dialogue Department. This department could serve in a role similar to that of the National Labor Relations Board in the United States; however, any activity enforcing rules on permissible labor organizing practices requires a new labor law.

Labor Courts are established in every governorate to hear labor-related cases. The Court of Cassation will appoint a Labor Disputes Panel to hear collective labor disputes cases. Cases involving individual employment disputes or violations of the labor law, both civil and penal, are brought before the Labor Courts for adjudication. These are subject to appeal to the Court of Cassation.

According to Articles 130 – 136 of the Labor Law No. 71 of 1987, mechanisms for solving collective labor disputes involve the Ministry of Labor and Social Affairs referring the dispute to the Higher Juridical Council (now assuming the judicial functions formerly within the Ministry of Justice). The Higher Juridical Council in turn refers the case to the "labor disputes panel" of the Court of Cassation, which is required to issue a decision within fifteen days. There is no right to strike unless an employer refuses to comply with the decision of the labor disputes panel, in which case the employer is also subject to an unspecified penalty.

Supporting institutions for labor and employment law are Iraq's nascent free unions, business associations and Chambers of Commerce. Business associations and Chambers of Commerce have been discussed in the section concerning contract law, but new labor and employment practices law will also bring changes that will require more capacity building programs in those institutions.

Democratic trade union organizing in Iraq has begun, but the uncertainty surrounding the legal framework, the disposition of the assets of the GFTU, and the lack of security have hindered progress towards open democratic unions. While it appears to be less relevant at this time, Law No. 52 is a major obstacle in that it restricts union organizing to a single union. In January 2004, the Iraqi Governing Council signed an order recognizing the Iraqi Federation of Trade Unions (IFTU) as the "authorized" union, but the legal force of this order is in question. The IFTU has received

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support from the Trades Union Congress of the UK and other international advisors; however, it faces property disputes with the GFTU, which also continues to operate at a reduced level. A third union, the Union of Unemployed Persons – also known as the Federation of Workers' Councils and Unions in Iraq – has attracted a limited amount of support. A new labor law that delineates organizing rights and union election procedures could help stabilize this uncertain situation.

2.10.3 Suggested Next Steps

Immediate Steps

- The new draft labor law should be finalized and enacted to modernize Iraqi law and bring it into compliance with the International Labor Organization's (ILO) Termination of Employment Convention of 1982 and other conventions. The Ministry of Labor should take the lead role, coordinating with other economic ministries and conducting public outreach and conferences to incorporate inputs from stakeholders, especially trade unions business associations, labor unions, civil society organizations and labor lawyers. The state's exclusive agency rights in employment in Article 15 of the Labor Law No. 71 of 1987 should be eliminated.

- The Ba'athist Union Law should be repealed and replaced with a new law providing the right to organize and bargain collectively, in accordance with the ILO Conventions on Freedom of Association and the Protection of the Right to Organize (1948) and Right to Organize and Collective Bargaining (1949).

Intermediate Steps

- Technical assistance should be provided to MOLSA in the implementation of the new labor law and the development of capacity building programs in its Industrial Relations and Social Dialogue Department.

- Technical assistance should also be provided to trade unions in conjunction with the International Confederation of Free Trade Unions and to business associations and employers, via the USAID-supported Business Centers and the Iraqi American Chamber of Commerce, in complying with the new labor law and educating their members and employees.

- A review of the operations of the Labor Courts should be conducted and a blueprint for institutional reforms developed.

Long-Term Steps

- Ongoing reviews of the labor and employment laws should be conducted and technical assistance in revising and amending the laws should be provided as necessary.

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- Ongoing technical assistance to unions, Chambers of Commerce and the Iraqi government in the implementation of fair labor and employment policies should be provided.

3.0 CONCLUSION

Iraq's commercial laws require significant reforms: the repeal of some laws, the revision of others, and the drafting of new laws to fill gaps. One important question is the scope of legal reform in Iraq (i.e. whether it should be implemented in a piecemeal or comprehensive manner). There is precedent for a comprehensive law reform project in Iraq. The Civil Code itself is a product of an earlier law reform commission in the 1930s and 1940s, which recognized the chaotic nature of a series of laws drawn from different regimes, external sources and governing philosophies. "[T]he commission hoped in particular to collect and codify the scattered rules which are in force for the time being and do away with the inconsistencies of the sources from which these rules had been taken."[34] More recently, the committee which drafted the Law on Legal Reform No. 35 of 1977, stated in the preamble to the law that "the civil legislation in Iraq includes a combination of rules taken from various sources differing in spirit and trend" and that rationalization was required. While the legal drafting committee attempted, with limited success, to create a socialist legal system in Iraq, it also recommended that the Civil Code, the Law of Commerce, and other laws be combined into a new Civil Code.

Sustained training, capacity building and transformation of government agencies and a wider public education campaign will be necessary to ensure that institutional and societal frameworks support implementation of legal reforms. Due to the fact that implementation of many post-Ba'ath era laws have been hampered by institutional resistance, further efforts in legal reform should focus on consensus building among key Iraqi stakeholders in the public and private sectors. This, as well as legislative drafting itself, will require extensive cooperation and coordination between the Iraqi government, private and non-profit sectors, and donor-funded economic governance, private sector development and justice sector projects. It is hoped that this report can contribute to that process and assist in the development of urgently needed legal and institutional reforms in Iraq.

Comprehensive Restatement of Recommendations

For quick reference and ease, two tabular restatements of the action items recommended in this report are provided below. The first table restates the suggested immediate next steps. The second restates the suggested intermediate and long-term next steps.

[34] Preamble, Iraq Civil Code of 1951, para. 3

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Table 1

Short-Term Recommendations

Commercial Law Area	*Immediate Recommended Actions*
General Recommendations	• Court facilities and systems should be upgraded. • More judges should be appointed in order to meet demand. • Implementation capacity of regulatory and enforcement agencies should be enhanced. • Key 2003-2004 economic law reforms should be ratified by the elected Iraqi government.
Contracts and Sales	• The Law of Regulation of Trade No. 20 of 1970 should be repealed as an immediate priority. This is a comprehensive price and economic control law that imposes penalties of up to ten years for such vague offenses as "dispos[ing] of . . . raw material in a matter not consistent with the purpose of its...import or supply." • The Law of Commerce No. 30 of 1984 should be amended to revise provisions regarding traders in Articles 1 - 38. Priority should be given to eliminating Ba'athist language which asserts the state's primacy over private interests, such as Article 7, which give ministries control over private enterprise by sector of the Iraqi economy, including requirements to keep a paper ledger which must be notarized and inspected annually, and business registration requirements that are unnecessarily duplicative of the Law of Companies and local municipal licensing regulations. • The onerous import and export licensing requirements of RCC Resolution 483 should be repealed. These rules require import and export licenses for all international commercial transactions. They are very burdensome by design, intentionally impede trade, and create opportunities for corruption in practice. • All ministerial and local regulations requiring prior approval of private contracts should be repealed. Several ministerial and local regulations, some of which may be "hidden" under the current circumstances, should be repealed if they were drafted under restrictive Ba'athist principles.
Companies	• The Company Law of 1997 should either be amended or replaced with a new Company Law. As discussed, the CPA amendments were intended to be provisional; they did not address every shortcoming of the 1997 Law but also in some cases created new legal problems. It is important to resolve outstanding issues for Iraqi business to move forward on a sound basis. The best starting point for either amending or replacing the Company Law is the proposed new company law drafted in the winter and spring of 2004. • The Law on Commerce No. 30 of 1984 should be amended to simplify requirements for approval of a company's name. As noted, although the registration and company name provisions of the Company Law were amended to make them more registrant-friendly, old, more restrictive requirements survived in the un-amended Law on Commerce. These requirements should be liberalized to assure a company registration process that is (a) simple; (b) quick; (c) cheap; and (d) does not require travel to Baghdad or, if possible, to any other distant place. The law also needs clearly to respect the rights of sole proprietors who have not registered as companies. Finally, Article 7 of the Law on Commerce, which mandates ministerial supervision of every business by sector and which has already been repealed by CPA order, should be deleted expressly from the statute by amendment.

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Agency	• The legal confusion surrounding requirements associated with the Commercial Agency Law No. 51 should be resolved by clarifying that these requirements were nullified by CPA order. • The Law of Registration No. 4 of 1999 should be repealed or amended to either remove all licensing requirements for anyone acting as a registration agent, or to state that all lawyers may act as registration agents.
Bankruptcy/Insolvency	• The Higher Juridical Council should be assisted in implementing the mandate of CPA Order 78 to appoint a dedicated cadre of bankruptcy judges, at least one in every governorate, including specialized training in bankruptcy law and procedure for the appointees. Further training for bankruptcy trustees, and other legal practitioners should also be made available. • The Bankruptcy Code should be amended to streamline the discharge of debtors by providing for more automatic discharge, eliminate the Public Prosecutor's participation in all cases, and eliminate the requirement of newspaper publication of both bankruptcy judgments and applications for discharge. • Law No. 22 of 1997 on State Companies should be amended to apply some Bankruptcy Law provisions to state-owned enterprises to provide for a transparent procedure for the liquidation, reorganization and sale of state-owned enterprises.
Collateral Lending and Secured Transactions	• The draft Law of Consensual Charges on Movable Property should be finalized and enacted through coordination among officials of the Ministry of Justice (from the central government plus northern Iraq), Ministry of Finance and the Central Bank, with the Ministry of Justice in the lead. • The Civil Code of 1951 should be harmonized with the Law of Consensual Charges on Movable Property by amending relevant provisions (Articles 363 – 374, 531 – 534, 581 – 582 and 1163) and deleting others (Articles 1321 – 1360). • The Law of Commerce No. 30 of 1984 should be harmonized with the Law of Consensual Charges on Movable Property by amending Article 71. • The Company Law No. 21 of 1997 should be harmonized with the Law of Consensual Charges on Movable Property by amending Articles 206 – 212, and Articles 186 – 201 should be repealed.
Competition and Consumer Protection	• A competition law should be drafted and enacted to establish an independent competition enforcement agency and proscribe predatory pricing, anti-competitive market consolidation and the formation of monopoly cartels. There are several recent examples of modern competition laws enacted in new market (former command) economies in Eastern Europe and the CIS countries that could be reviewed and adapted for the Iraqi environment. • The draft consumer protection law that has already been delivered to the Secretariat of the Council of Ministers should be finalized and enacted, preferably with an opportunity for Iraqi business and civil society organizations to review and comment on the draft prior to its enactment into law.

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Foreign Investment	• The draft Investment Promotion Law should be finalized and enacted. The Ministry of Planning and Economic Development Cooperation is the lead ministry, and inputs should be obtained from other key ministries, including the Ministries of Industry, Trade and Finance, as well as key private sector stakeholders such as business associations and chambers of commerce and NGOs. • The Code of Civil Procedure should be amended to provide for judicial enforcement of international arbitration awards.
International Trade	• The Law of Regulation of Trade No. 20 of 1970 should be repealed, as should all associated regulations and practices requiring import and export licensing from the Ministry of Trade. This would remove major impediments to trade and opportunities for rent seeking. • The Customs Law of 1984 should be amended as provided in the *General Commission of Customs Modernization Plan*, including legislative revisions to harmonize it with the WTO Kyoto Convention and GATT customs valuation standards. • The Law of Transportation No. 80 of 1983 and its implementing regulations should be amended to eliminate the state supremacy provisions in both Article 2 and the ministerial regulations, and to provide a statutory basis for payments through documentary credits (letters of credit), electronic payments, and the shipment of goods with electronic bills of lading. • Ministerial Directive No. 1 of 1984 under the Law of Transportation should be amended to remove references to documentation requirements for standard transportation waybills, requirements for representatives of multiple ministries at customs clearance warehouses, and mandatory requirements for non-Iraqi trucking companies to enter into contracts with the state-owned transportation company. • The Law of Commerce No. 30 of 1984 should be amended to update definitions of negotiable instruments and letters of credit and provide provisions for electronic payments and electronic signatures in accordance with international practice.
Intellectual Property	• The Trademark and Copyright laws should be amended to revise penalty provisions downward and restore judicial discretion and bring them to a realistic, enforceable level linked to the value of the counterfeit goods in question. • The institutional capacity of the trademark, copyright and patent registries should be enhanced through training and improved business processes and information technology. In the longer term, this should be integrated with an overall strategy for improved IP enforcement activities.
Labor and Employment	• The new draft labor law should be finalized and enacted to modernize Iraqi law and bring it into compliance with the International Labor Organization's (ILO) Termination of Employment Convention of 1982 and other conventions. The Ministry of Labor should take the lead role, coordinating with other economic ministries and conducting public outreach and conferences to incorporate inputs from stakeholders, especially trade unions business associations, labor unions, civil society organizations and labor lawyers. The state's exclusive agency rights in employment in Article 15 of the Labor Law No. 71 of 1987 should be eliminated. • The Ba'athist Union Law should be repealed and replaced with a new law providing the right to organize and bargain collectively, in accordance with the ILO Conventions on

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	Freedom of Association and the Protection of the Right to Organize (1948) and Right to Organize and Collective Bargaining (1949).

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Table 2

Short-Term Recommendations

Commercial Law Area	*Intermediate and Long-Term Recommended Actions*
General Recommendations	• An Iraqi Commercial Law Reform Commission should be established to undertake a comprehensive review and reform of Iraqi commercial law resulting in a body of law that is modernized, harmonized, and codified by subject matter. • National Assembly and staff should be given intensive training in legislative drafting skills to promote clear and unambiguous statutory language. • The commercial regulatory functions of federal, regional and local government should be clarified in law. • Iraqi law should be harmonized and codified by subject matter.
Contracts and Sales	• A law on leasing of movable property should be enacted corresponding to international best practices. There is currently no such law in Iraq. While this is not urgent, it will be important in bringing Iraqi commercial law up to international standards. • The Civil Procedure Code should be amended by adding new provisions that provide for judicial recognition and enforcement of international arbitration judgments agreed to under an arbitration clause in international commercial contracts. This law could be based on the UNCITRAL model international arbitration law. • There is a substantial need for expanding the judiciary and capacity building for civil court personnel and docket systems. The number of judges is inadequate to fulfill judicial roles as criminal investigating magistrates and trial judges, let alone civil trial judges. Continued capacity building training for court clerks, physical rehabilitation of court buildings and installation of information technology docket management systems will also secure and speed resolution of civil cases. • Assistance should be provided to Chambers of Commerce and business associations in the development and promulgation of standard form contracts and training of business people and lawyers in formation of contracts and basic contract law at Business Centers. More awareness of basic contract law and the regularity provided by standard form contracts which are fair and free of “fine print” legalistic language could be beneficial to the domestic economy. General training and assistance to small and medium enterprises would be useful to promote the principles of free contracting. • At the appropriate time, efforts should be made to draft and enact a franchise law. Since franchising is a widespread practice in the global economy, a legal framework should be established to accommodate possible future investments by franchisors. • Electronic commerce contract law provisions should be drafted and enacted by amending the Civil Code or in a separate law. • As Iraqi commerce develops, further revisions to the Civil Code and Law of Commerce will be desirable to address emerging issues and fully harmonize them with international conventions and best practices. Further, as this effort progresses, an assessment should be conducted to explore possible combination of the Civil Code and Law of Commerce into one new code. This would be a large law reform project best undertaken under the

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	leadership of an Iraqi law reform commission with international advisory assistance as needed.
Companies	• The 1997 Company Law and any future company law should be fully applied throughout the Kurdish regions as soon as possible. There also needs to be a decision on whether it is to be applied there by officers reporting to the Registrar and the Minister of Trade in Baghdad or by some regional structure. Resolution of these questions has been listed as an intermediate step, not because it is not urgent and important, but because it has Constitutional implications, and therefore is probably not capable of immediate resolution. • Training and capacity building for registrar officials should continue to put in place modern business-friendly registration systems for registering companies. This will be a long-term process, including roles for both Iraqi and foreign trainers and advisors, as demand increases and new offices are opened in various parts of the country with changing needs as the commercial environment gets more sophisticated.
Agency	• The draft new commercial agency law should be finalized, based on discussions with stakeholders, and adopted by the Iraqi government. • Article 52 of the Civil Procedure Code of 1969 should be amended to allow attorneys of the highest grade a wider scope of action when representing clients in litigation and as agents, and to remove the ambiguity in the general law of agency created by Article 52, which requires special authorization for a wide range of acts, even if a general power of attorney has been created.
Bankruptcy/Insolvency	• Training and support for lawyers' associations, business associations and other civil society organizations should be provided to raise awareness of bankruptcy law. As the economy grows and more businesses are organized, some will fail and bankruptcy as a remedy will become more relevant. • The Penal Code should be amended to eliminate criminal prosecution for negligent bankruptcies. The vagueness of Articles 469 and 470 of the Penal Code may be a factor suppressing the filing of bankruptcy petitions by debtors who fear that their personal expenditures may be subject to scrutiny and found to be "excessive," or their record keeping less than satisfactory. • A bankruptcy court should be established with exclusive jurisdiction over insolvency cases. This step depends upon increased demand for bankruptcy law adjudications. Training should be provided for bankruptcy court personnel and practitioners, and advice and equipment for bankruptcy court asset registries and docket management systems.
Collateral Lending and Secured Transactions	• Collateral pledge registry offices at the Public Notary's Offices in Baghdad, Erbil, Sulamaniyah and Basra should be established as soon as the Law of Consensual Charges on Movable Property has been passed. • A modern computerized database should be established in Baghdad for registering nationwide security interests and sales of receivables and privileges. • Collateral pledge registry offices should be opened in other locations across the country as soon as possible.
Competition and Consumer Protection	• Advisory and material assistance should be provided by international donor agencies in setting up a competition agency and a consumer protection agency, as well as continuing assistance for COSQC's standard-setting and quality control inspection directorates to

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	help them apply the new legislation. • Competition law and consumer protection regulations should be issued under the new laws to provide detailed rules for the regulators to exercise their functions. In particular, competition regulations must provide rules for monitoring and regulating privatization of state-owned enterprises for competition issues, to prevent excessive market consolidation and integration. • COSQC standards and Law No. 54 of 1979 should be harmonized with WTO Agreements on Sanitary and Phytosanitary Standards and Technical Barriers to Trade as part of a WTO accession program. • The effectiveness of competition and consumer protection agencies should be evaluated, and ongoing institutional capacity building should be provided. • Civil society organizations promoting consumer protection and safe product standards should be supported with training and assistance in public education.
Foreign Investment	• The Iraqi Investment Promotion Authority should be established and its capacity built to promote and facilitate FDI in Iraq. • Regulations should be passed to implement the Investment Promotion Law, including standards and schedules for income tax exemptions and other incentives. • Iraq should accede to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. • Advisory and material support should be provided to the Iraq Investment Promotion Agency in marketing Iraq to international investors, and in establishing a "one-stop-shop" for investment procedures. • Public discussion among business associations and other civil society organizations of the issue of foreign investment and its value to Iraq should be promoted. • Opportunities for bilateral and multilateral investment agreements should be explored and pursued as appropriate, including closer engagement of Iraq with the World Bank Group's Multilateral Investment Guarantee Agency (MIGA). • Existing free zones should be revived and new ones established in appropriate locations with a revised new set of free zone legislation.
International Trade	• Iraq should continue to work with the WTO to meet requirements for full membership on a reasonable timetable. Agricultural policies and product standards should be revised to comply with the WTO/SPS and TBT agreements. • An institutional reform program of training and organizational restructuring should be launched within the Ministry of Trade to transform it from a trade control to a trade promotion agency. • Responsibilities for controlling goods at border crossings control should be centralized within Customs in coordination with relevant authorities involved with product standards and market regulation, border import inspection functions for agricultural and industrial products, and border crossing security.

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	• Modern port and maritime safety laws should be enacted that harmonize Iraq's port and maritime regulations with IMO and other international standards. As part of this effort, clear lines of enforcement authority need to be established between the Iraqi Ports Establishment and the new Iraqi Coastal Defense Force. • Iraq should accede to the Montreal Convention of 1999 and make necessary amendments to provisions of the Law of Transportation regarding international rules for air carriage liability. • Training and assistance should be provided to upgrade the capacity of customs personnel and modern customs information technology systems. • The Ministry of Transportation should undergo a transformation from a manager of state-owned transportation companies to a modern regulatory and enforcement agency. • An ongoing effort should continue to identify and address gaps in Iraq's trade legislation, including customs regulations, product and agricultural standards, and transportation.
Intellectual Property	• A dedicated intellectual property enforcement unit should be organized within the Ministry of the Interior, or as an adjunct to the Ministry of Trade or Industry. Members of the unit should receive specialized training in enforcement techniques and information technology assistance. • Iraq should accede to the main international IP conventions that it has not yet joined, in particular the Berne Convention on Copyright, and the Nice Convention on the Classification of Goods and Services. Technical assistance should be provided as necessary to expedite accession. • Future development of intellectual property law in Iraq should focus on support for improved enforcement; modernized trademark, copyright and patent registries; and generating greater public awareness of the value of safeguarding intellectual property. • Support should be provided to civil society organizations of artists, writers, scientists, engineers and others with a stake in intellectual property protection, to assist those organizations in developing public information campaigns that describe the value of intellectual property and the societal and individual costs resulting from the theft of intellectual property.
Labor and Employment	• Technical assistance should be provided to MOLSA in the implementation of the new labor law and the development of capacity building programs in its Industrial Relations and Social Dialogue Department. • Technical assistance should also be provided to trade unions in conjunction with the International Confederation of Free Trade Unions and to business associations and employers, via the USAID-supported Business Centers and the Iraqi American Chamber of Commerce, in complying with the new labor law and educating their members and employees.

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	• A review of the operations of the Labor Courts should be conducted and a blueprint for institutional reforms developed. • Ongoing reviews of the labor and employment laws should be conducted and technical assistance in revising and amending the laws should be provided as necessary. • Ongoing technical assistance to unions, Chambers of Commerce and the Iraqi government in the implementation of fair labor and employment policies should be provided.

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